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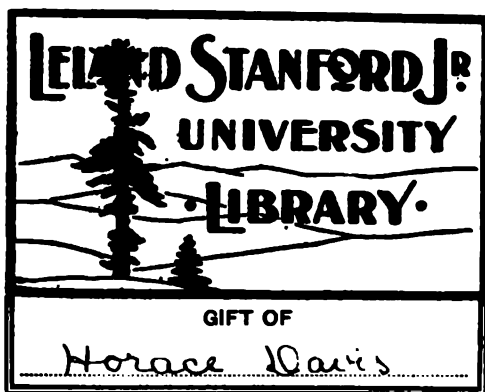
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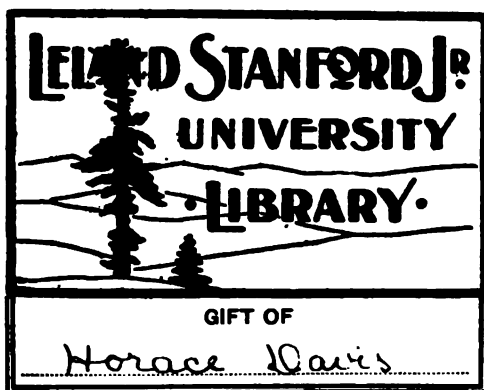
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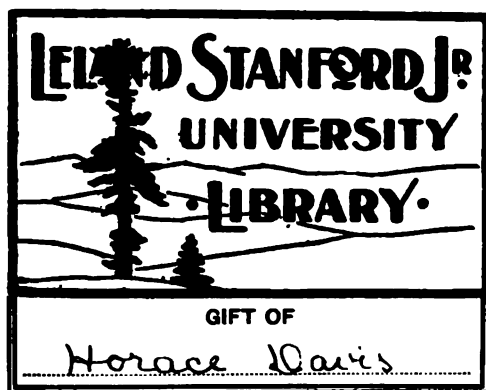
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346



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September 1900

THE AMERICAN BUSINESS WOMAN

A GUIDE FOR THE INVESTMENT, PRESERVATION, AND
ACCUMULATION OF PROPERTY ; CONTAINING
FULL EXPLANATIONS AND ILLUSTRATIONS
OF ALL NECESSARY METHODS
OF BUSINESS

BY

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**TO THAT GENUINE AMERICAN LADY
THE BEST WOMAN I HAVE EVER KNOWN—MY MOTHER
THIS WORK IS LOVINGLY DEDICATED**



PREFACE

IN my experience as a practising lawyer, no one fact has been more strongly impressed upon me than that the majority of American women are almost entirely ignorant of the ordinary rules and methods of business. In my practice many of my clients have been women, and, of these, I can recall but one whose acquaintance with regular business methods would, among men, be considered even ordinary ; she (now a grandmother) was brought up almost from childhood to a business which she, until quite recently, successfully pursued.

This lack of knowledge among women is not at all due to any natural deficiency (on the contrary, my experience leads me to believe that women are quick to learn business methods when properly instructed), but it is rather the inevitable result of existing circumstances and conditions. We cannot reasonably look for a contrary state of affairs when we reflect that for ages women have been trained and educated in almost everything except the principles of business, and have been instructed, if not compelled, to leave all matters of business to their fathers, husbands, or brothers.

The existing condition is, however, none the less lamentable because excusable. Many a woman who has been left in comfortable circumstances by her deceased father or husband, has been reduced to poverty and want because, through lack of education in matters of business, she has been compelled to rely upon the judgment of others, whose advice, although perhaps honestly given, has been the worst possible. And many a woman who ought to have been in independent

circumstances during her entire lifetime, has come to an old age of poverty because of her inability to protect herself against that army of sharks and rascals which, unfortunately, must be permitted to exist, and to which a defenceless woman of means presents a golden opportunity.

There is no proper reason why a woman who is possessed of property shall not thoroughly understand and practise the approved methods by which only it may be wisely invested and preserved. Such knowledge, modestly applied, comports perfectly with the gentle and womanly qualities which the civilized world loves and venerates, and without which a woman becomes, to some pitiable, to others disgusting ; and the possible emergencies in which it will prove of almost vital importance are too manifest to require enumeration here.

Realizing, then, both the necessities and the possibilities in the premises, my purpose in offering to the public this volume is to furnish, for the women of my country, as perfect an instruction as I am able to give in all things relating to their pecuniary affairs which I conceive to be for their interest and welfare.

I have endeavored to make this work as simple and explicit as the complicated nature of some essential subjects will permit, believing it to be far better that some shall read over statements with which they are already familiar, than that others shall seek necessary information and shall not be able to find it.

I have also endeavored to avoid the needless exposition of legal principles, which are, however, so closely connected with all the affairs of property as to make their entire avoidance a practical impossibility. Whenever it has been deemed necessary to explain legal principles and methods, I have undertaken to strip the explanations of verbiage, and to bring them within the easy comprehension of all to whom they may be of service.

Finally, this work is not intended to be in any wise an aid to the avaricious. It contains no explanations of schemes for the rapid making of fortunes ; no hints for the benefit of speculators ; no rules for the constructing of air-castles.

For the plain and simple reasons which I have set forth, the instructions which will be found in the following pages are intended for those who need instruction in legitimate and proper methods of managing property — methods which will yield as large returns as are proper and consistent with other essential conditions, yet which are, above all other considerations, and in all respects, capable of employment without unreasonable difficulty and without risk.

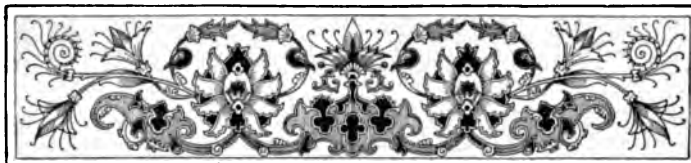
There are many kinds of so-called investments which are commonly regarded as safe, which have been either omitted altogether from this volume, or have not received at my hands an indulgent treatment, because I realize and accept a certain measure of responsibility in writing a work of this kind, and am assuredly unwilling even to suggest unnecessary risks to those whose fortunes it may be my destiny in some degree to direct.

Having received a thorough training for the work in hand, through a diligent experience of a considerable number of years, not only in the legal methods which relate particularly to investments, but also in the practical management of real and personal property, it is now my very earnest desire, as well as my sincere belief, that no woman who shall carefully and intelligently follow the instructions which are contained in this volume will in any manner risk or mismanage the means which Providence has placed in her hands.

J. H. C.

NEW YORK CITY, January 1, 1900.





CONTENTS

CHAPTER I

	PAGE
Introduction—Value of Money—Income and Expenditure— Principal and Income—Rules of Economy—Expense Ac- counts—Uniformity of Incomes—Estimates of Future Incomes and Expenditures—Evenness of Incomes—Dis- tribution of Investments.	1-13

CHAPTER II

Banks—Bank-Accounts—National Banks, State Banks, and Private Banks—Rules for the Selection of Banks—Regu- lation of Banks by Law—Bank Checks—Forgery—Certi- fied Checks—Cashiers' Checks—Signatures—Overdrawing Accounts—Opening Accounts—Indorsements—Protest— Deposits—Check-Books.	14-64
--	-------

CHAPTER III

Savings Banks—Distinguished from Banks—Benevolent In- stitutions—Great Value of Savings Banks—Regulation of Savings Banks by Law—Investments in Savings Banks— Selection of Savings Banks—Opening Accounts—Pass- Books—Depositing Money—Drawing Money—Interest Paid by Savings Banks—Balancing of Pass-Books—Advantage of Long, Steady Accounts—Financial Panics—Runs on Savings Banks.	65-79
--	-------

CHAPTER IV

Trust Companies—Extensive Powers of Trust Companies— Regulation of Trust Companies by Law—Selection of Trust Companies—Depositing Money—Certificates of Deposit— Drawing Money—Interest Paid by Trust Companies—Trust Companies not for the Receiving of Insignificant Sums.	80-89
--	-------

CHAPTER V

Safe Deposit Companies—The Term Defined by Law—Regulation of Safe Deposit Companies by Law—Description of Safe Deposits—Selection of Safe Deposit Companies—Routine of Business with Safe Deposit Companies.	PAGE 90-95
--	---------------

CHAPTER VI

The General Principles of Investment—Investments and Speculations—The Safe Rule with Regard to Speculations—Rules for Distinguishing Investments from Speculations—Purchase Investments and Loan Investments—Safety of Investments—Margin of Safety—Valuation of Securities—Laws Affecting Investments—Incomes from Investments—Usury—Complicated Schemes for Investment—Different Kinds and Values of Money—Real Objects of Loan Investments.	96-118
--	--------

CHAPTER VII

Bonds and Stocks—National, State, and Municipal Bonds—Public Indebtedness—Exemption of Bonds from Taxation—Corporations—Trusts—Corporation Stocks—Corporation Bonds—Effect of Legislation on Corporation Stocks and Bonds—Application of the General Rules of Investment—Corporations for the Purposes of Investments—Land Companies.	119-134
---	---------

CHAPTER VIII

Mortgages—Definition of the Word—Distinction between the Debt and the Lien of a Mortgage—Mortgagor's Equity—Precedence of Liens—Purchase-Money Mortgage—First and Subsequent Mortgages—A Perfect Mortgage a Perfect Loan Investment—Safety of Mortgages—Title to Mortgaged Premises—Examination of Titles—Title Guaranty Companies—Values of Securities for Mortgages—Laws Affecting Mortgages—Taxation of Mortgages—Builders' Loans—Improved and Unimproved Real Estate—Effect of Location upon the Values of Securities—Classification of Improved Real Estate for Purposes of Mortgages—Fire Insurance—Lenity toward Mortgagors—Margin of Safety—Ratio of Amounts Loaned to Values of Securities—Increasing Difficulties in Making Good Loans—Mortgage Corporations—Bonds—Assignment of Mortgages—Satisfaction of Mortgages—Foreclosure of Mortgages—Extension of Mortgages—Receipts and Indorsements on Bonds—Mortgage Accounts—Chattel Mortgages.	135-188
--	---------

Contents

xi

CHAPTER IX

	PAGE
Real Property—Definition—Substantial Character of Land—Importance of Laws for the Protection of Titles to Real Property—Estates in Land—Merger—Joint Ownership of Land—Title to Land—Deeds—Land the Original Source of Income—Ownership of Land a Perfect Purchase Investment—Importance of Owning Houses—Selection of Homes—Classification of Homes—Cost of Homes—Homestead Acts—Building Loan Associations—The Perfect Home—The Purchasing of Real Estate—Eminent Domain—Condemnation of Land—Adverse Possession—Status of Non-Residents—Present and Future Margins of Safety—Auction Sales—Tax Sales—Foreclosure Sales—Improved and Unimproved Real Estate—Sinking Funds—Contract for Property—Special Distinction between Investments and Speculations in Real Estate—Improvement of Real Estate—Increase in Value of Real Estate—Effects of Joint Ownership of Real Estate—Legal Action of Partition—The Theory of Heavy Mortgages—Incomes from Investments in Real Estate—Taxes and Assessments—Repairs—Insurance of Buildings against Fire—Real Estate Agents and Brokers—Commissions.	189-285

CHAPTER X

Landlord and Tenant—Leases—Rents—Securities for the Payment of Rents—Personal Responsibility of Tenants—References—Sureties—Method of Deposits—Rents Payable in Advance—Method of Improvements—Ground Leases—Personal Characters of Tenants—Uses and Purposes for which Real Estate may be Occupied—Rent Accounts.	286-344
--	---------

CHAPTER XI

Descent and Distribution of Property—Wills—Definitions—Reasons for Making Wills—Conditions for the Successful Operation of Wills—Memoranda for Wills—Purposes of Wills—Effect of Division of Estates among Several Children—Primogeniture—Entails—Perpetuities—Validity of Wills—Executors, Trustees, and Guardians	345-371
---	---------

CHAPTER XII

Guardians, Executors, and Administrators—Guardians of the Estates and Guardians of the Persons of Wards—Testamentary Guardians—Guardians Appointed by the Courts—	
---	--

Duties and Powers of Executors and Administrators—Let- ters Testamentary and Letters of Administration — Accounting.	PAGE 372-380
--	-----------------

CHAPTER XIII

Married Women—Former Complete Disabilities—The Theory of Merged Personalities—Laws of the Different States with Regard to the Rights of Married Women—Suggestions to Married Women of Means.	381-391
---	---------

CHAPTER XIV

Miscellaneous Remarks and Suggestions—Annuities—Sign- ing Papers—Powers of Attorney—Lawyers—Pecuniary Reputations—Precautions against Theft and Petty Frauds— Persons of Unsound Mind—Advisors in Business Matters— Bills of Exchange and Promissory Notes.	391-418
---	---------



THE AMERICAN BUSINESS WOMAN



THE AMERICAN BUSINESS WOMAN

CHAPTER I

INTRODUCTION—VALUE OF MONEY—INCOME AND EXPENDITURE—PRINCIPAL AND INCOME

OF all worldly commodities money is the most valuable and the most desirable, for, to say nothing of the benefits of civilization and society, and the comforts, refinements, and legitimate pleasures of life, our very existence and sustenance depend directly upon it. This being the case, while an unnatural desire for riches—a craving for immense fortune—is a disease far too prevalent in our day and much to be deplored, a just and proper appreciation of the value of money, and of the difficulties which are to be found in the gaining and preservation of it, is not only commendable but positively necessary to the welfare and prosperity of mankind.

“Money was made to spend,” is the often-repeated adage of the fool; but the wise man knows that the value of money lies in its possession—in the strength and security it affords—in the blessings and benefits which it provides. So the former squanders his property, very often dies early and in poverty, and leaves those whom nature has made dependent upon him to battle against a poverty and distress for which they are unprepared, and which they should not have been

called upon to endure; while the latter enjoys continually more and more the comforts and wholesome pleasures of life, often to an honored old age, and leaves those who are dear to his heart safe against all the ills of poverty and want. Few courses of life can be sadder than the one, few more praiseworthy and honorable than the other.

The great problem of ages has been, "How shall we *get* money?" Equally great and important is another problem,—"How shall we *keep* what we already have?" or, with an extended significance, how can we so arrange our affairs that we, our children, and their children cannot possibly come to want? or, as finally reduced, how can we obtain real and lasting safety of investment and security of income? The former problem may perhaps be solved alone, but whoever shall solve the latter problem will also, unwittingly perhaps, solve the former.

If such absolute safety of investment were possible of attainment, the ideal family would then consist of a succession of happy generations, each steadily increasing in wealth, refinement, cultivation, and usefulness. But the tendency and spirit of our institutions is opposed to such a possibility, as leading to a dangerous concentration of the nation's wealth, and the Law itself raises an insurmountable obstacle to such a possibility in its prohibition of entails and perpetuities. Each generation must to a certain extent shift for itself, and it is our business to provide prudently for ourselves and our generation, while we do our best to furnish a favorable start for the generation which is to follow us.

The first and fundamental rule, as well for the preservation as for the accumulation of property, is that we shall, at all times, live well within our incomes, or, in other words, that we shall lay by certain portions of our incomes regularly each year. This principle applies equally to persons of ample means who seek merely to preserve what is already possessed, and to persons in humble conditions who strive providently to acquire protection against the ills and incapacity of old age. It follows from the universal truth that in this life there can be no standing still, that we must either

continually advance or continually recede, either increase or diminish steadily our fortunes.

The disposition to save money, when properly governed,—a reasonable spirit of frugality,—must itself be regarded as one of the cardinal virtues. It presupposes self-denial and self-government, and gives birth to and nurtures consequential virtues, which will be found to be both numerous and excellent. The spendthrift is necessarily selfish, indolent, reckless, unreliable, and often dishonest, lawless, and depraved; but the frugal man is unselfish, industrious, steady, and more often than otherwise honest, law-abiding, and trustworthy. Even that exponent of a deranged type of mankind whose indiscriminating craze permits of no intermediate position, the miser, is a quiet, peaceful, law-abiding citizen.

But aside from such general considerations, there are practical reasons of the highest importance for the necessity of this fundamental rule. Unexpected misfortunes, unlooked-for expenditures, the constantly diminishing value of money regarded as a loan, the uncertainties of income derived from the safest and most permanent kinds of investments,—these possibilities require our utmost care and apprehension, and we are indeed in dangerous condition if we are not, in some measure, prepared to meet them when they come.

The following illustration will serve to impress more strongly upon the mind the practical importance of these statements: Less than a quarter of a century ago, little difficulty was to be encountered in loaning money on the security of first-class mortgages in certain vicinities at an interest of seven per cent. per annum, and there was little or no loss from idle capital waiting for investment; while at the present time really first-class loans in the same vicinities are difficult to make at an interest of five per cent. per annum, and there is considerable loss from idleness. Briefly it may be said, and in general, that the percentage of actual returns from such loans has, within a score of years, decreased from seven to about four and one half. Suppose that a certain person was, twenty years ago, possessed of a property

of fifty thousand dollars, all of which was invested in mortgage-securities. The annual income from this property would have been thirty-five hundred dollars, while at the present time it would not be more than \$2250. If, during the twenty years, the entire income from the property had been consumed, the foolish and improvident person would now bemoan the loss of about one third of her income (equivalent, practically, to the loss of one third of her principal), in addition to the necessity of contemplating a possible repetition of the cruel process. On the other hand, if this person had, during the twenty years, wisely allowed herself an annual expenditure of two thousand dollars only, carefully preserving and investing the balance of her income, her original property of fifty thousand dollars would have increased to about eighty-five thousand dollars, and her annual income, at the low rate of four and one half per cent. interest, would now amount to \$3825 — an increase of nearly ten per cent. over the original income, notwithstanding the great decrease in the rate of interest.

Again, let us suppose a person to be the owner of four pieces of real estate upon which are erected four similar buildings, and that each of these buildings returns a net annual rental of one thousand dollars. The annual income of the owner will therefore be four thousand dollars. If, now, owing to business depression, one or more of the buildings shall become vacant and idle, or the owner shall be obliged to lower the rents, or an unexpected assessment shall be made against the property, the income of the owner will be very seriously, though temporarily, impaired (it may be reduced one half or three fourths, or it may disappear altogether for a time), and, unless the owner has laid by considerable portions of her income during the years gone by, she will find herself in the position of one suddenly reduced from comfortable circumstances to a distressing poverty.

As nearly as can be estimated, the net returns from first-class investments generally in the older civilized portions of the world are not materially greater than three per cent. per annum. Our own country is rapidly growing old, and

we must look forward to the inevitable result, *i. e.*, a decrease in the percentages of incomes from investments. Computing from the best available data, we may conclude that the extent of decrease in our incomes for which we must eventually provide will be equal to about one third of the incomes. It follows generally that all persons who, in our times and country, shall regularly consume more than two thirds of their incomes are surely travelling upon the road to poverty.

It has been suggested and may be believed by some that the rule which requires the laying by of portions of incomes each year should not apply to those fortunate persons (if there be such) whose incomes are so very large that they will be satisfied at any time to have them decreased by considerable amounts, and are therefore at liberty to spend their entire incomes for a considerable number of years. Such a belief, however, can result only from the arguments of the spendthrift and profligate ; for if the millionaire's income is expended upon other than proper requirements it is wasted and squandered.

It may also be said, unfortunately with a far greater appearance of reason, that there are many cases in which incomes are so small that it will be difficult or even primarily impossible to apply the rule. That this statement is true cannot be doubted, but, while such cases may awaken our compassion, they cannot alter the truth of the inexorable rule. Persons whose incomes are only sufficient for their sustenance are not independent, but poor ; they are living beyond their means, and unless either their incomes can be increased by additional earnings or their necessary expenditures can be decreased, the painful consequences of violating the rule must be endured. Thus there is, it appears, no means of avoiding or circumventing the rule ; it must be lived up to, and it may therefore be laid down as an invariable precept, in words as harsh and practical as these : Live well within your income or die poor.

In order that we may live within our incomes it is necessary that we shall know very nearly the exact amounts of our incomes and expenditures, and for this purpose the

keeping of careful accounts of all receipts and disbursements is indispensable. An ordinary account-book, ruled on the left of each page with one column for the dates and on the right with three columns for thousands, hundreds, and cents respectively, will be sufficient for the purposes of the account. Omitting the first page, the account should be started on the second page, in order that the pages which are devoted to receipts shall be opposite the pages for disbursements for corresponding dates. All receipts (of income only, no part of the principal being considered in this account) should be put down, with brief descriptions and dates, upon the pages upon the left hand, and all expenditures of income, with their proper dates and descriptions, are similarly to be put down upon the pages upon the right hand.

Some care must be exercised that receipts shall not be entered twice in the account-book. A very common mistake occurs in the following manner: A check may be received from an agent for rents collected, the check deposited in the bank, and the amount of the check properly entered among the receipts in the account-book. Some days afterward the owner of the account-book, requiring cash, may draw her own check, cash it at the bank or elsewhere, and carelessly enter the amount of this money among her receipts. This of course will be a second and an erroneous entry, because the amount is in reality a part of the agent's check which has already been entered in the account-book. Moreover, the check which has been cashed will not represent an amount which has been received as a portion of an income, but merely the transfer of a portion of an income from the bank to the pocket. To avoid mistakes of this kind, which will evidently render an account-book useless, or worse than useless, it is only necessary, when making an entry either of receipts or expenditures, to consider whether or not the item has been included in a previous entry.

When a page of expenditures has been entirely filled (there being usually many more entries of expenditures than of receipts), a line should be drawn across the unused part of the page of receipts, from under the last figures downward

to the foot of the page, to indicate that the entries on the page are complete ; the sums of the columns of receipts and expenditures should then be put down under lines drawn below the respective columns, and also carried forward to the tops of the next corresponding pages, the left-hand pages being used for receipts, and the right-hand pages for expenditures. When adding the columns of the pages, the amounts which have been carried forward from the preceding pages must, of course, be included, in order that the sum at the foot of each page shall show the total amount of receipts or expenditures, instead of merely the sum of the entries on the particular page. This process is to be repeated and continued until the end of the year, when the annual account will be complete, and the new account for the following year will be in order. At the top of each page of receipts, in small figures, and a little to one side, it is well to write the balance, or difference between the total receipts and the total expenditures up to that time. The person keeping the account will then be able to tell at a glance just how matters stand, and how rapidly her receipts are gaining over her expenditures.

It is perhaps unnecessary to remark that too great care cannot be taken to avoid mistakes in calculation, since the account-book is an important guide, and a bad guide is undoubtedly worse than none at all.

It will appear later that a check-book, properly kept, may be an excellent account-book of receipts and expenditures, and may be made to answer many of the purposes of an ordinary expense-account.

A properly kept expense-account will furnish all necessary information as to the amounts of receipts of income and expenditures and the balance between them, at any time when such information may be necessary, and the task of living well within the income, as required by the rule, will then be reduced to a maintaining, at all times, of the required ratio between the receipts of income and the expenditures.

In the simplest condition of income and expenditure, the mathematical elements which are involved in this task will

cause but little difficulty. Thus, if a person shall have a regular, certain, and uniform income, say of six thousand dollars per annum, and the ratio of expenditures to income which shall have been decided upon shall be two thirds (that is, the annual total expenditures shall not exceed two thirds of the annual income), the account-book at the end of each year must show an amount of receipts equal to six thousand dollars and an amount of expenditures not exceeding two thirds of six thousand, or four thousand dollars. If the expenses of living are uniform from month to month, the process may be still further simplified by verifying the required ratio at the end of each month. Thus, in the above illustration, the monthly income will be five hundred dollars, and the monthly expenditure must therefore not exceed two thirds of five hundred dollars, or \$333.

In the majority of cases such uniformities in both incomes and expenditures will indeed not be found ; the maintaining of the required ratio at all times during the year will be complicated by the fact that the expenditures for different months will vary greatly because of annual or other periodical expenditures, such as taxes, interest, insurance premiums, etc. Difficulties of this kind may be overcome by determining upon the amounts of the required monthly savings each year in advance, taking carefully into the account all important annual expenditures, and making ample allowances for possible increases in these expenditures from year to year. The following example will serve to explain the method of such a calculation: Suppose an annual income to be \$9000, or \$750 per month, and that special annual expenditures are : insurance, payable March 1st, \$300 ; interest, payable May 1st and November 1st, \$250 at each payment ; and taxes, payable October 1st, \$1000. If two thirds has been accepted as the correct ratio of expenditures to income, the total amount of income which may be expended annually will be \$6000, and the amount which must be laid by each year \$3000. Deducting \$1800 (the total amount of the special expenditures) from \$6000 will give \$4200 as the amount which may be expended annually for ordinary purposes, or \$350 per

month. The result of this calculation may be plainly seen by means of the following table of receipts of income, expenditures, and balances, or amounts laid by, for each month of the year :

		INCOME.	EXPENDITURE.	BALANCE.
January	last . . .	\$750.00	\$350.00	\$400.00
February	" . . .	1500.00	700.00	800.00
March	" . . .	2250.00	¹ 1350.00	900.00
April	" . . .	3000.00	1700.00	1300.00
May	" . . .	3750.00	² 2300.00	1450.00
June	" . . .	4500.00	2650.00	1850.00
July	" . . .	5250.00	3000.00	2250.00
August	" . . .	6000.00	3350.00	2650.00
September	" . . .	6750.00	3700.00	3050.00
October	" . . .	7500.00	³ 5050.00	2450.00
November	" . . .	8250.00	⁴ 5650.00	2600.00
December	" . . .	9000.00	6000.00	3000.00

¹ Including insurance, \$300.

² Including taxes, \$1000.

³ Including interest, \$250.

⁴ Including interest, \$250.

Incomes and expenditures are rarely uniform to the extent assumed in the examples which have been given ; for the purposes which are at present under consideration, therefore, they must be determined in advance by careful estimation, taking into consideration all possible irregularities, and making it certain that all errors shall be upon the side of safety—that is, that incomes shall be somewhat underestimated and expenditures similarly overestimated. The ability to estimate with close approximation the amounts of future incomes and expenditures will prove to be of great value, and this ability may be cultivated and improved by practising the following suggestion: At the beginning of the year a careful calculation of probable receipts and expenditures for each month of the year may be made, and a memorandum made of the amounts of income over and above expenditures which, according to the calculation, should be on hand on the last day of each month during the year. On the last day of each month the net amount of income actually

on hand may be set down on the memorandum opposite the estimated amount for that month. At the end of the year the memorandum will show how far the ability of estimation is to be relied upon and will also offer suggestions for a more accurate estimation for the following year.

The evenness of incomes may be better maintained by making investments in such a manner that the returns shall be received at different times of the year. For example, the interest of three mortgages may be made payable on the first days of January and July, on the first days of March and September, and on the first days of May and November, respectively, instead of all on the usual interest-days in May and November. In the same manner, if the rentals from three parcels of real estate shall be payable quarterly, the first may be made to become due in the months of January, April, July, and October ; the second in February, May, August, and November ; and the third in March, June, September, and December, instead of all upon the usual rent-days in May, August, November, and February. In this manner incomes will be received in smaller and more frequent payments. This method of regulating the receipts of income has the advantage of keeping the person who receives it more regularly supplied with ready money, and also of lessening the derangement of affairs in case of the loss of a portion ; while, on the other hand, it involves considerably more work in the matters of keeping accounts, making deposits, receipts, etc.

In this place, as appropriately as in any other, it may be well to call attention to the homely old proverb that it is unwise to keep all one's eggs in one basket. Of the two evils of being deprived of a part of one's income and of losing it all, the former is unquestionably to be chosen whenever there is a possibility of choosing. The speculator, true to his gambler's nature, risks all that he has in one mighty operation, hoping that by so doing he will realize a much larger profit ; careful investors, also true to their instincts of caution and safety, guard against the entire loss of their incomes by so making their various investments that they cannot all

be subject to the same influences at the same time, and therefore will be least likely to fail at the same time. As an illustration of this principle, it would be the height of folly to invest all one's principal in one large building suited only to a special and unusual purpose, because, if circumstances should destroy the demand for the unusual specialty, the building would become idle, and ruinous results would almost certainly follow. Accordingly the principal may be distributed in various kinds of investments ; but this principle of distribution must not be carelessly or blindly applied, lest, in our anxiety for a proper variety of investments, we shall include some which will turn out disastrously.

An important rule for the preservation of property is that the line of distinction which must separate income from principal shall be kept constantly well defined ; for if it is necessary to save a portion of the income each year, it certainly cannot be of less importance that the principal, which furnishes the income, shall be free from all confusion and complication which might lead to an encroachment upon and a consequent impairment of it.

In connection with this subject it is to be noticed that there appears to exist in our country a tendency to approach somewhat too rashly this properly inviolable subject of principal, — a tendency certainly rather of barbarous than of civilized origin. Thus the savage, knowing no such distinction as that between principal and income, boasts of the number of his ponies, slaves, and other personal belongings ; Americans, not properly appreciating this distinction, commonly speak of a person as having a fortune of so many thousands or millions of dollars ; while the more conservative Europeans, fully appreciating the importance of the distinction, usually refer to persons of wealth as being possessed of so many pounds, francs, or marks *per year*.

In order that this distinction between principal and income may be clearly maintained, it is necessary to consider what ought properly to constitute principal and what income. The dictionary gives the following definitions,—Principal : property or capital as opposed to interest or income ; a sum

of money on which interest accrues or is reckoned. Income : the amount of money coming to a person or corporation within a specified time or regularly, whether as payment for services, interest, or profit from investment ; revenue. For the purposes of this volume these definitions, unless materially modified, will prove to be unsatisfactory ; for to the wise investor interest will very often accrue on money which is income as well as on that which is principal, and no careful person will be willing to regard all kinds of profit from investment as income. Definitions which will be found much more serviceable to investors are these : All money which is regularly received either for the use of property or as compensation for services is income ; all other property is principal. Thus rents, interest, dividends, royalties, annuities, salary, wages, commissions, professional fees, regular returns from business, are to be regarded as income ; while capital, gifts, legacies, devises, unusual profits from investments, and savings from income are to be accounted as principal.

In general it may be said that that which is purchased with principal is still principal in another form, and similarly that which is purchased with income continues to be income. Whatever is of a permanent nature may be considered as principal, while perishable objects which must be consumed and replaced are to be regarded as income. The houses in which we live are parts of our principals because they were purchased with parts of our principals and are of a permanent nature ; but the furniture which is in the houses may well be regarded as income, because it will eventually become antiquated and worn out and will have to be replaced.

Since regularity or uniformity of income, at least so far as the possibility of decrease is concerned, is a consideration of so great importance, an excellent guide to the distinction between principal and income will be this very quality of regularity. If, therefore, a profit is received which is unusual, occasional, or which the possessor cannot reasonably expect to receive regularly, it must be regarded as a part of the principal. If we purchase a house for five thousand dollars and sell it for six thousand, the profit of one thousand dollars, as well

as the original purchase price, is principal. If we buy Government bonds and sell them at a profit of five hundred dollars, this profit is principal, not income. If we find fifty dollars in the street, it should become a part of our ever-growing principal, because we cannot depend upon finding that amount regularly each year. If we buy a horse and carriage for our own use they should be purchased with income, and they will remain income for this reason and also because they are not of a permanent nature ; but if we sell them at a profit the profit becomes principal because we cannot expect regularly to repeat the operation.

The suggestions which have been made for the distinguishing between principal and income appear to be in all respects sufficient. The necessity that such distinctions shall generally favor the principal is, however, so important, that to the suggestions which have already been offered may be added another to the effect that whenever serious difficulties in making the distinction shall arise, and investors shall find themselves in quandaries, the most advantageous solution of the problem will be that which will place the doubtful items to the credit of the principals.

The cautious suggestions and principles which are contained in this chapter may be thought by some to have been carried too far—so far as to encourage that unreasonable degree of economy which approaches niggardliness. This is by no means the intention of the author ; no more should the explanations produce such an effect. But whether they have been carried to extremes or not, considerations precisely similar to them have largely been the means of building up the legitimate, healthy fortunes of this and of all other lands, and, further, they have been, and must be, the principal means of preserving fortunes when once fortunes have been acquired.





CHAPTER II

BANKS — THE BANK-ACCOUNT

AN institution almost indispensable to the business woman is the bank. As will be seen in the following pages, the bank-account permits the business woman to pay her bills with checks drawn at the proper times, payable to the proper parties, and for the exact amounts, thus avoiding the dangerous necessity of keeping on hand considerable amounts of cash or the necessity of running continually to the savings bank or other place of deposit, the often serious inconvenience of counting money correctly, difficulties in detecting counterfeit money, and the unpleasant possibility of contracting disease from the handling of paper money. The bank-account also furnishes a convenient and reasonably safe means of sending from place to place money by messenger or through the mails, for properly drawn checks cannot be collected without proper indorsements or forgeries of the same. It provides also, by the returned vouchers with the proper indorsements upon them, perfect receipts for the amounts which have been paid by the checks. It affords a comparatively safe means of carrying about upon the person, if necessary, the equivalent of large sums of money ; a simple means of collecting the various checks, drafts, coupons, etc., which may be received ; and, in the check-book, a valuable reminder of future obligations, a perfect account of receipts and disbursements, and a valuable record of past transactions.

Banks are not to be confounded with savings banks. They are entirely different institutions, founded under different

laws, for different purposes, and with entirely different methods of business. Banks are established for the convenience of depositors, generally pay no interest on deposits, and allow their depositors to draw money by means of checks at any times and to any amounts which are within the balances of the depositors ; while savings banks exist for the purpose of encouraging the saving of money, pay interest on all deposits, have no such things as checks, and pay money to depositors only upon the presentation of pass-books. The distinction will appear more clearly from the following chapter, which is devoted to the subject of savings banks.

There are three general kinds of banks, not differing materially in their manners of doing business with depositors, but differing considerably in other important respects ; they are National banks, State banks, and private or individual banks. National banks are organized under the laws of the United States Government, and are authorized to issue the bank-notes which constitute a large part of the ordinary paper money in circulation among the people. Bank-notes are, in fact, promissory notes by which the National banks promise to pay to the bearers on demand the amounts of the notes in coin or in other standard money, and they are made good at all times by Government bonds which are required by law to be deposited, by the National banks, with the United States Treasurer. State banks and private or individual banks conduct business under the laws of the States in which they are located, and have no authority to issue bank-notes which pass, as the National bank-notes, currently as money. Private or individual banks are, as the name indicates, owned and controlled by individuals or business firms, and are conducted generally (except for certain restrictions and requirements of the laws) in the same manner as are ordinary business corporations.

The selection of a bank with which to transact the business of the bank-account, is a matter of great importance, inasmuch as some banks are, as far as we can judge at least, in sound and substantial financial conditions, while others are in danger of suspension and failure at each financial crisis

and in times of continued depression in business. Unfortunately no regular method for ascertaining satisfactorily the financial conditions of banks can be set forth, since evidently the actual financial conditions of the banks depend upon transactions of which the public is and must remain for the most part ignorant. It is for this reason that suspensions and failures of banks usually come without warning of any kind to the depositors. The suggestions which will be given here for the discrimination between and the selection of banks will, however, in the majority of cases prove to be valuable and sufficient.

In the first place, other things being equal, National banks may be chosen in preference to State banks, and State banks in preference to private banks. Indeed, the adoption of the general rule to avoid private banks altogether whenever such avoidance is at all practicable may be recommended without hesitation. The following facts will be recognized as excellent reasons for the suggested preference of National banks and the avoidance of private banks : National banks are required by the statutes of the United States to make regular reports of their financial conditions to the comptroller of currency ; they are subject to thorough inspections by competent persons who are appointed by the comptroller of currency, whenever such proceedings may be deemed necessary ; they are required by law to have larger capitals than are required of State banks by the laws of some of the States ; they are forbidden to certify checks in excess of deposits ; and wilful misapplication of funds and making false entries in the books of the banks are crimes which are punishable by the United States authorities. State banks are amenable generally only to the laws of the States in which they conduct business. In general they are under a more or less careful supervision of the State authorities ; they are required to make reports of their conditions to the proper State officers or departments ; their stockholders are liable to a greater or less extent (commonly to the amount of the par values of their shares) for the debts and losses of the banks ; and the directors are punishable for certain illegal mismanagement of the affairs of the

banks. The investment of the funds of the State banks is generally restricted by the laws of the States in which they conduct business. They may, within certain limitations, purchase, own, and sell real estate ; they may discount notes and loan money on personal securities to a limited extent ; they may loan money on real estate securities in certain limited localities ; they may purchase and own the bonds of the United States, certain State bonds, the bonds of certain cities, counties, towns, and villages, and in general transact what is commonly known as a banking business. Private banks are, generally speaking, under restrictions similar to those of the State banks. But their responsibility depends mainly upon the few persons who compose the firms, or upon the single proprietors, instead of upon the larger number of shareholders as in other banks. The business of a private or individual bank is the property of the proprietor ; he may (within certain restrictions intended to protect the holders of notes or bills) sell out the business or bequeath it to persons with whom the depositors may not be willing to transact business.

The laws of the various States with regard to the regulation of banks and other moneyed institutions are so numerous and so different in detail that it is difficult to give a general purport. It may, however, be safely taken for granted that in the older and more conservative States banks and moneyed corporations are more carefully restricted and regulated than in the newer and so-called progressive States, where, in order to encourage enterprises, the statutory regulations of these institutions have been enacted, in some cases, apparently without proper regard for the welfare of the depositors. Where a choice between States in which to transact the business of the bank-account is possible, a comparison of the banking laws and also of the statistics of bank failures will not fail to prove beneficial.

Another important rule which may be followed with advantage when selecting a bank is that all considerations shall be confined to old and successful banks having large or considerable capitals and long-established, high reputations.

Recently instituted banks may, it is true, be conducted upon the safest and most conservative principles ; but until the test of endurance has been applied to them, and until their good reputations have been fairly earned, they must be regarded as experiments in the financial world, notwithstanding all recommendations which may be founded upon statements of large financial supports and the high characters of officers and managers. Profitable banking businesses are by no means easily or quickly to be obtained, and for this reason newly established banks are often tempted to attract business by offering dangerous inducements, such as the discounting of doubtful notes, the allowing of unreasonable overdrafts, and the taking of improper risks in the investment of funds.

The capitals, or capital stocks, of banks are divided into shares and distributed among the several stockholders or shareholders, according to the respective amounts which have been purchased by them. Since the stockholders are usually liable, to the amounts of stock held by them, for the debts of the banks, the financial responsibilities of the banks will depend largely upon the amounts of their capitals and upon the financial characters of their stockholders ; in these respects, evidently, banks having large capitals and established good reputations will have the advantage over others.

In some instances banks which have made large profits in business, instead of distributing the profits as dividends to the stockholders, or using the profits to increase the capitals, have accumulated out of the profits funds which are called surplusses. In this manner certain banks have become wealthy and highly responsible although the amounts of their actual capitals may be comparatively small ; for the purpose of estimating the responsibilities of such banks, the surplusses may to a certain extent be considered as forming parts of the capitals.

The rule for the selection of banks which has been last under consideration, will evidently tend to preclude from the list of satisfactory banks all such as are located in small cities and villages. These must generally be regarded as

dangerous institutions, and must be entirely avoided except in cases which practically compel the making use of them.

And here it may profitably be remarked that too great care cannot be taken to avoid the dangerous influences of locality upon the safety of investments generally and of bank-accounts in particular. Persons living in small villages which are distant from any of the larger cities are, unless extremely careful, almost certain to follow the general opinions of their neighborhoods, which, because of ignorance and local pride, often look upon local investments which are actually worthless as first-class, and consider local banks which are often upon the sure road to failure as great and sound financial institutions. Small banks and institutions of a similar nature which are situated in small cities and villages, have been, and will undoubtedly continue to be, the causes of great losses of property—losses which, unfortunately, often fall upon those who are not at all able to sustain them.

The reasons for such facts are not difficult to discover. Small affairs are generally managed by small men, and the incompetent officers and directors of small banks in small places, although looked up to as sound and reliable men by the unsophisticated people of the localities, with alarming, though perhaps not with unreasonable, frequency bring their banks and their depositors to ruin. Men of great sagacity, experience, and business ability cannot reasonably be expected to devote their time and energies to small institutions the entire profits of which would be poor compensations for their services. Small banks have small capitals, and inadequate facilities for obtaining money in cases of need ; they therefore are unable to withstand sudden losses and are quick to suspend in times of sudden panic. Again, banks located in small communities, controlled by the dangerous influences of locality, often invest their funds largely in the enterprises of the neighborhoods in which they are located, and meet with the disasters which follow quickly in the wake of poor investments.

The discounting of notes constitutes, to a greater or less extent, a part of the business of nearly every bank ; it is a

practice which, carelessly pursued, involves great risk, and has been the actual cause of many a bank failure. The practice may be briefly explained in the following manner :

A business man may find himself in need of money for immediate uses. He draws and signs a promissory note, takes it to his bank, and asks the bank to discount it — that is, to pay him the amount of the note less a certain discount, greater or less, according to the responsibility of the business man, and to which the bank is entitled for the accommodation. The business man is expected to deposit with the bank some security or collateral (such as Government bonds, railroad bonds, or stocks), or to have the note indorsed by a responsible third party, or both. If the note, at maturity, shall be promptly paid, the transaction will prove a profitable one for the bank ; for, in addition to the regular interest, the bank will have received the amount of the discount. Thus, tempted by the prospect of large profits, and of increasing business through liberal policies, banks may discount the notes of persons who, with their indorsers and collaterals, may turn out to be irresponsible and worthless, in which cases the banks are without remedy and must suffer the losses.

The published statements, and the statements which are printed by the banks for circulation among their depositors, may be of some value to the depositors in determining whether their banks are prudently managed. If the statements show very large businesses in the discounting of notes, or that the banks are dealing largely in dangerous so-called securities, the accounts should be at once withdrawn and more conservative banks made use of.

It may also be remarked in this place that, while first-class banks are generally unwilling to receive or maintain the accounts of persons whose balances are uniformly very small, or who are in the habit of drawing numerous checks for very small amounts, yet the balances at the banks should always be kept within proper bounds, more especially in times of panic and general financial disaster. All moneys over and above reasonable bank-balances should, until they

may be more permanently invested, be deposited in trust companies, savings banks, or other safe depositories; and in times of panic, when there is an unusually large number of bank failures and suspensions, balances in the banks may wisely be reduced, at least temporarily, to much smaller amounts.

In some cases considerable amounts are deposited in banks with the understanding that the money is to be left on deposit for stated periods of time, and in consideration of this fact the banks often pay interest on such accounts. These accounts or deposits are called "special" or "time" deposits. As a general rule they possess no advantages over deposits in trust companies and savings banks, and they are open to the serious objection that the amounts cannot be quickly withdrawn for the purpose of depositing them in safer places, if occasion shall make such action necessary. In view of these facts special arrangements of this kind may well be dispensed with entirely.

The officers and clerks of the banks, with whom business women may have dealings, are: the president and cashier, who are the executive officers, and with whom all business except that of the bank-accounts must be transacted; the receiving-teller, who receives deposits; the paying teller, who pays checks and certifies them when requested to do so; and the bookkeepers, with whom bank-books must occasionally be left to be balanced.

The ordinary method of procedure upon opening an account at a bank is as follows: The proposed depositor presents herself at the bank during business hours, accompanied by a friend or acquaintance who is known at the bank and who may introduce her; or, if no such acquaintance shall be available, she may introduce herself, giving her name and residence, and whatever references may be required, and stating that she desires to open an account. She then writes the regular signature, which she intends to use for the signing and indorsing of checks, in a book which is provided by the bank for that purpose; gives the bank officers such further information as they may require; hands in the

amount of her first deposit ; and receives from the bank a check-book, a bank-book (in which the amount of her first deposit has been entered), and some deposit tickets. The books and tickets are taken to her home by the depositor, and the simple proceeding has been completed.

The signature (as well that used at the bank as that used for the signing of other important documents and papers) should possess two important qualities : first, it should be written in such a manner that it may be easily remembered in all its details, and all subsequent signatures should be made to resemble it as exactly as is possible ; second, such a style of signature as will be difficult for others to imitate should be adopted. The first quality will enable the clerks and officers at the banks readily to recognize the signatures, and the second will tend to prevent forgeries.

A regular signature, in the style of the copy-books, is generally considered to be easy of imitation, and it is said that a signature which is written in backhand (with the letters slanting backward) is not so difficult to counterfeit as a signature of the ordinary style. Unusual, cramped, or commonly called characteristic handwritings may be regarded as most difficult of imitation.

The name should be written in full, or at least the full Christian- and sur-names should be used, generally without prefix or addition of any kind. The first name (Christian) and the last name (sur-name) are the necessary names, the middle names being merely additional. Thus " Mary Johnson Doe " and " Mary J. Doe " are much better than " Miss " or " Mrs. Mary Johnson Doe " ; and " M. J. Doe " and " M. Johnson Doe " are improper, the latter being scarcely permissible under any circumstances. Long names are presumably more difficult to counterfeit than short names ; hence a person having several short names may write them all in full, and in the case of a widow with a very short name the prefix " Mrs. " may not be objectionable. On the other hand, long names are naturally more difficult to write than short ones ; infirm persons, who may find even the writing of their names severe tasks, may therefore lighten

the tasks by using the middle initials instead of full middle names, or even by omitting these names altogether, with the assurance that their poor trembling signatures will, in any case, be extremely difficult to counterfeit.

Abbreviated names, childish or pet names, and nicknames should be severely avoided, if only by reason of the requirements of good taste. Such names as "Mamie Clark," "Kittie Williams," and "Baby Henderson" assuredly will not, according to the best proprieties, appear to advantage upon bank checks, although the checks may be duly honored at the banks. In the case of married women their own Christian names should be used in their signatures in preference to the Christian names of their husbands. The signature "Mrs. Robert M. Thompson," may, for example, easily be confounded with "Robert M. Thompson," and still more easily with "Mr. Robert M. Thompson"; while confusion may easily be avoided by using the signature "Sarah H. Thompson."

When a bank-account is kept by a person in a fiduciary capacity (as an executrix, agent, trustee, or as treasurer for a society) the signature must include the distinguishing title, which may be either written in full or designated by a common or well-known abbreviation; thus, "Mary Johnson Doe, Extrx.," "Mary J. Doe, Trustee," "Mary J. Doe, Treas.," "Mary J. Doe, Agt." When a bank-account is kept by one person for the benefit of another who is the real proprietor (as by a daughter for an infirm or invalid mother) the former is the *attorney in fact* for the latter, and this fact should be indicated by the signature in this manner: "Jane W. Doe, by Mary J. Doe, Attorney in fact," or "Jane W. Doe, per Mary J. Doe, Atty. in fact," or "Jane W. Doe, by Mary J. Doe, Atty." In general a plain signature is to be preferred to an ornamental or flourishing one, although some slight flourishing may be used if by such means signatures will be made more distinctive and more difficult to counterfeit.

It may be well to suggest that the signatures should be practised considerably in order that they may be written

with reasonable celerity, without the need of such strict attention to appearance as will be tedious to those who may be in waiting.

In order to lessen the probability of successful forgeries, signatures which are used at the banks and for similar business should not be used for ordinary purposes, such as the signing of letters, messages, etc. Slight but important differences (such as capitals written in different manners or the use of entire middle names instead of initials only) between signatures which are used for these different kinds of purposes, may be the means of detecting and preventing forgeries by those whose knowledge of the particular handwritings comes from the inspection of signatures at the ends of letters only.

A bank check, or, as it is commonly called, a check, is a written order to the bank at which the person drawing the check has an account, to pay on demand part or all of the deposits to the depositor or to some other person. The person who draws and signs the check is called the *drawer* or *maker*; the person to whom the check is originally made payable is called the *payee*; a person who writes his name upon the back of the check, whether it be the payee or another person, is an *indorser*; and the person to whom the check is made payable by the indorsement is an *indorsee*. These terms are not all technically correct, since some of them apply properly to bills of exchange and promissory notes only. But they are in common usage and are not at all ambiguous; they therefore may be accepted as sufficiently correct for all ordinary purposes.

There are three general methods of drawing checks, having reference to the manner of payment: first, when the check is intended to be paid to some person, business firm, or corporation other than the drawer; second, when the check is intended to be paid to the drawer in person upon presentation at the bank; and third, when the check is intended to be paid to any person who may present it at the bank, as when a messenger or a person who is not known at the bank must be sent to cash a check. In the first

case the check should be drawn payable to the order of the proper person, firm, or corporation, by the correct name, as is indicated in Figs. 1 and 2 ; in the second case it should be made payable to " cash " or " myself," erasing or drawing a line through the printed words " the order of," as in Fig. 3 ; and in the third case the name of the payee should be " bearer," the words " order of " being erased, as in Fig. 4.

The blank checks which are furnished by the different banks for the use of their depositors differ to a considerable extent in the matters of design and the positions of the various spaces, but these variations are immaterial as far as the practical uses are concerned. Thus, the space which is intended for the numerals of the amount (in Fig. 1, \$1016⁴/₁₀₀) may be at the foot of the check and at the extreme left ; or the space for the number of the check may be at the upper right-hand corner. Checks are sometimes printed in such a manner as to read " Pay to or order," instead of, " Pay to the order of " as in the illustrations. When such checks are used those which are intended to be presented at the banks for collection by the drawers should read simply, " Pay to cash," or, " Pay to myself," the words " or order " being erased ; and those which are intended to be collected by strangers at the banks should have the words " the bearer " written in the proper spaces, and the words " or order " should be erased, so as to read, " Pay to the bearer." Checks of this style, which are intended to be paid to individuals or business firms, must, of course, be filled out without erasure, to read, for example, " Pay to William Jones & Sons or order."

Probably the best general rule is that unnecessary titles (such as Mr., Messrs., Esq., Miss, Mrs.) should not be attached to the names of the payees upon checks, because they are entirely superfluous. But there are occasions when the addition of titles serves to a certain extent to indicate the purposes of the checks, and there is therefore no objection to it. For example, a check which is given in payment of a physician's bill may very properly be drawn payable to the

order of "Dr. Richard Roe"; a check which is given to a clergyman for charitable purposes may read, "Pay to the order of Rev. John Doe"; and a lawyer's retainer may be paid by a check which is drawn to the order of "William Blackstone, Atty. at law." Checks which are given to senators, members of Congress, college professors, etc., may, as a matter of compliment, be drawn payable to the order of "Hon. John Doe" or "Prof. Richard Roe."

There are also cases in which the official titles of the payees form parts of their proper designations, as where checks are to be paid to persons not in their individual but in their official capacities. In such cases it is proper and necessary as a measure of precaution, that the official titles shall be mentioned in the checks. A check which is intended for the payment of taxes on real or personal property should read, "Pay to the order of John Doe, City Treas.," "John Doe, Town Treas.," "John Doe, Co. Treas.," "John Doe, Collector of Taxes," or "Receiver of Taxes," as the case may be. A check for the payment of a mortgage which is held by the estate of a deceased person should be made payable to the order of "John Doe, Exr.," or "John Doe, Trustee"; or it may read, "Pay to the order of the Estate of Richard Roe, Decd." So a check which is paid to a lawyer in settlement of his client's claim against the drawer should be made payable to the order of "William Blackstone, Attorney (or Atty.) for Richard Roe."

Whenever practicable, checks should be drawn payable to the orders of the persons, firms, or corporations who are intended finally to receive the money for which the checks are given. If several individuals shall be jointly entitled to the money, all should be named as payees, thus: "Pay to the order of John Doe, Richard Roe, Mary Williams, and Sarah B. Hicks." If either of several persons shall be entitled to the money, in the alternative, all should be made payees, with the connective "or" between the names; as "Pay to the order of John Doe, or Richard Roe, or Mary Williams." By this means checks, when they have been paid and returned by the banks to the drawers, will be found to have

№. 287... ° NEW YORK January 20th 1891....

SAFE NATIONAL BANK

Pay to the Order of George Williams \$1016.⁵⁷/₁₀₀

One thousand and sixteen ⁵⁷/₁₀₀ DOLLARS

Mary J. Doe

FIG. 1.

№. 201... NEW YORK May 24th 1892....

SAFE NATIONAL BANK

Pay to the Order of The Empire Provision Co. \$164.⁰³/₁₀₀

One hundred and sixty-four ⁰³/₁₀₀ DOLLARS

Mary J. Doe

FIG. 2.

№. 374... NEW YORK February 16th 1892....

SAFE NATIONAL BANK

Pay to the Order of Cash \$100.⁰⁰/₁₀₀

One hundred ⁰⁰/₁₀₀ DOLLARS

Mary J. Doe

FIG. 3.

№. 297... ° NEW YORK May 28th 1891....

SAFE NATIONAL BANK

Pay to the Order of Beaver \$200.⁰⁰/₁₀₀

Two Hundred ⁰⁰/₁₀₀ DOLLARS

Mary J. Doe

FIG. 4.

been indorsed by the proper persons, and they will therefore be available as receipts for the moneys paid ; the possibility of collection by the wrong parties will also be materially diminished by the practice of this precaution.

The drawing of checks payable to the bearer is to be avoided except when checks which are otherwise drawn will not be practicable ; for should they be lost they may, as a general rule, be collected by the finders before the banks can be notified of the losses.

An important consideration in the drawing of checks is the proper guarding against the possibility of fraudulent alteration, either by increasing the amounts, or by changing the names of the payees. For this reason all of the spaces in a check should be entirely filled up, either by the written amount, the names of the payees, or by lines drawn across the unoccupied spaces as shown in the illustrations. The space which is intended for the amount expressed in letters (called the *body* of the check, because it is considered the most important part, and in case of a difference between it and the numerically expressed amount, usually takes the precedence) should be filled up by beginning the letters on the extreme left, leaving very little space before them, and by writing the fraction which expresses the cents as near to the end of the letters as possible. In the same manner no unoccupied spaces should be left before, after, or between the names of the payees, and the figures of the amount expressed numerically should be written close together, with no spaces either before, after, or between them large enough for the possible insertion of figures. In the amount of a check, cents are properly expressed by a fraction having two figures in the numerator and the numerals 100 in the denominator, as in Figs. 1 to 4.

As an example of the fraudulent increasing of the amount of a check (commonly called " raising the check ") the following instance may be given : In a check for the amount of nine dollars and four cents the amount was, ignorantly or carelessly, written, " Nine $\frac{4}{100}$ Dollars " and " \$9 $\frac{4}{100}$," with considerable spaces before the word " Nine " in the body of

the check, and between the “\$” and the “9” in the numerically expressed amount. By the skilful insertion of the word “Ninety” and the figure “9” in the places indicated, the amount of the check was made to read, “Ninety-nine $\frac{99}{100}$ Dollars” and “\$99 $\frac{99}{100}$.” The result was a loss of ninety dollars and ninety cents, which by the exercise of ordinary care, intelligence, or perception might easily have been prevented.

Sometimes checks are so written as to contain memoranda of the purposes for which they are given. For example, a check which is given in settlement of all claims is made to read, “Pay to the order of Richard Roe, in full of all demands”; or a check for professional services, “Pay to the order of Richard Roe, for professional services to date.” So checks are sometimes given, not for the purpose of paying debts, but to serve merely as memoranda of the debts; such checks (called *memorandum* checks) differ in appearance from ordinary checks in that they have the word “memorandum” written across the faces. These customs are not to be recommended; they poorly answer the purposes for which they are intended, for which much better means are always available, and they are often causes of misunderstanding and confusion.

Ordinarily banks will not pay checks which are drawn upon them before the days of their dates, and it has therefore become a common practice among certain classes of debtors to pay bills with checks which are dated several days later than the days of delivery (post-dated checks), thus compelling the payees to wait for the coming of the dates before the checks can be collected, the debtors trusting in the meantime to be able to make deposits which will make the checks good upon the days of their dates. The specific reprehending of such a shiftless and unbusinesslike practice is all but unnecessary here, since ordinarily no proper advantage is to be derived from it, and the drawing upon one day of a check which will be worthless until some other day, will, in itself, be a reflection upon credit and methods which no reputable person should allow. If for any reasons debts cannot be

paid promptly at the times when they become due, honest debtors will state the facts honestly and fearlessly ; the creditors of honest debtors will believe their statements, and, what is more to the point, they will wait, at least reasonable times, while their honest debtors arrange for the final payment of the debts.

The greatest care ought always to be taken that bank-accounts shall not be overdrawn, or, in other words, a uniform and invariable rule should be adopted never to draw checks unless the balances at the banks shall be certainly sufficient for the payment of the checks. Banks ordinarily will refuse to pay overdrawing checks (the checks will be dishonored), and if, through confidence in and courtesy to the drawers, such checks shall occasionally be honored, nevertheless it may be taken for granted that the reputations of the drawers at the banks will be by no means benefited by the transactions.

Suggestions such as these will not be necessary for the purpose of warning depositors against the intentional over-drawing of their bank-accounts, for it is to be presumed that the self-evident folly of the proceeding will be sufficient at once to condemn it ; but the suggestions will be necessary for the avoiding of mistakes and acts of carelessness by reason of which the overdrawing of bank-accounts frequently occurs. Miscalculations of balances in check-books, which are often the causes of overdrawing, are to be guarded against by the exercising of ordinary care in dealing with the figures of the check-books, and by verifying all balances in the manner which will shortly be explained.

Probably the most common cause of the unintentional overdrawing of bank-accounts is the premature calculating upon the payment of checks which have been recently deposited and which have been included in the latest balances of the check-books. For the purposes of illustration the following case may be supposed : On Monday the balance of Mary J. Doe at her bank and in her check-book is five hundred dollars ; on Tuesday she receives a check for five hundred dollars, deposits it promptly in her bank, and computes

her balance to be one thousand dollars ; and on Wednesday she draws her check for six hundred dollars and delivers it to Richard Roe, to whom she has been indebted for that amount. It will be at once evident, in this case, that Mary J. Doe has run the risk of overdrawing her account, by assuming that the check which she deposited on Tuesday will be duly paid ; for she has drawn against the check without having allowed sufficient time for its collection by her bank. If this check shall turn out to be good, her balance, after the payment of her check to Richard Roe, will amount to four hundred dollars ; if, on the other hand, the check which she has deposited shall come back to her bank dishonored, she will have overdrawn her account by the amount of one hundred dollars, and her check to Richard Roe will probably be dishonored at her bank.

Undesirable occurrences of this kind may easily be avoided by allowing ample time for the collection of all deposited checks before drawing against them or in any manner calculating upon them as good. When checks which have been deposited are drawn upon banks which are located at considerable distances from the depositors' banks, considerable times must be allowed for their collection ; when the banks upon which the checks are drawn are located in the same cities with the banks of the depositors, two or three days will ordinarily be a sufficient allowance ; and when depositors may have serious doubts concerning the proper allowances of time, inquiries at their banks as to whether the doubtful checks have been collected will ordinarily furnish the necessary information.

With regard to forgeries of signatures upon checks, the general rule is that if a bank shall pay a forged check the loss will fall upon the bank, because banks are presumed to know or to ascertain the correctness of their depositors' signatures, and to be able to detect forgeries ; but if the success of a forgery has been contributed to by the carelessness of a depositor, the bank will be exonerated and the depositor will be compelled to suffer the loss. If a forgery of a depositor's name shall be discovered by the depositor, the bank must be

notified of the forgery at once ; otherwise the bank may be discharged from liability. In general all reasonable care should be taken by depositors to render the crimes of forgery and counterfeiting as difficult as possible, and also, to the best of their abilities, to assist the banks in the prosecution of remedies, and in the punishment of criminals of this kind.

Forgery may be said to be one of the most comprehensive of crimes. It is broadly defined as the false making or altering of any writing with intent to defraud ; and the mere offering or disposing of a forged writing, with knowledge of the forgery and with intent to defraud, may be itself a forgery. The essence of the crime of forgery is evidently the intent to defraud. Therefore such acts as writing names incorrectly when indorsing checks, in order that the indorsements shall correspond with the names of payees which have been incorrectly written, are not forgeries, and, under circumstances which will be explained in the proper place, are not objectionable.

The credit of an ordinary bank check depends upon the character of the drawer only. If the drawer is responsible or honest, the check will undoubtedly be duly paid, and if the drawer is irresponsible and dishonest the check will probably be worthless. There are therefore many occasions upon which persons to whom payments are to be made ought not to accept ordinary checks, because of the difficulties or losses which may follow the dishonoring of the checks. Common examples of such cases are real-estate transactions such as the purchase of real estate, where a deed must be delivered and may be put on record before the vendor can collect the amount of the check which is given for the purchase price ; the loaning of money on bond and mortgage where the legal papers must be delivered upon the receipt of the check for the amount of the loan, and the mortgage may be recorded before the check can be collected by the mortgagor ; the discharging or satisfaction of a mortgage, where the bond and mortgage must be returned to the mortgagor and a discharge or satisfaction-piece delivered at the time of receiving the check which is intended to pay the

debt, and where there is a possibility that the bond may be destroyed and the mortgage discharged of record before the mortgagee can make certain that the check will be paid. In all such cases, as well as in all cases where persons to whom checks are to be paid must incur important obligations, relinquish or destroy important remedies, or otherwise run the risks of serious difficulties upon the faith and credit of the checks, *certified* checks only should be accepted.

A check is said to be *certified* when the bank upon which it is drawn certifies that there are sufficient funds at the bank to the credit of the drawer for the payment of the check, and that the amount of the check will be reserved by the bank for that purpose, or, in other words, when the bank itself certifies that the check is good. The process of having a check certified is as follows: The check is regularly drawn and signed and presented to the paying teller of the bank upon which it is drawn with the request to certify it. The teller ascertains the balance of the drawer of the check and, if the balance shall be sufficient, stamps upon the face of the check (usually in bright red or blue ink) the word "certified" or "good," with the name of the bank and the date of certification, and writes his name upon the certification. He then makes a memorandum of the certification in a book which is kept for that purpose and returns the certified check to the person who has presented it. The general effect of the certification of a check is to make the bank which certifies it responsible for its payment. The credit of a certified check, therefore, does not depend upon the character of the drawer alone, but has the additional guaranty of the bank which has certified it. For this reason certified checks are commonly considered as equivalent to actual money, and in the majority of cases this is practically true. There are, however, possibilities that certified checks will not be paid because of the failures of the certifying banks and the irresponsibilities of the drawers. These possibilities, though remote, should be provided against by promptly depositing the checks and by exercising in other respects the reasonable care which is necessary in the case of ordinary checks.

Since the credit of a certified check depends principally upon the character of the bank which has certified it, and since banks are not all equally responsible, obviously there may be occasions upon which certifications should be rejected as unsatisfactory, as, for example, where checks which have been certified by unknown and insignificant banks are offered in payment of large amounts and the non-payment of the checks will certainly involve unusual difficulties. In certain cases also there may be reasonable grounds to suspect the genuineness of certifications. The way out of the difficulty in cases of the former kind will be the requiring of checks which have been certified by satisfactory banks in lieu of the doubtful checks; and the remedy in cases of the latter kind will be inquiries at the certifying banks before the doubtful certifications have been accepted. Occasions which will call for such unusual precautions are indeed very rare, and the rule that properly certified checks may be generally relied upon will seldom be the cause of serious difficulties.

Checks which are intended to be certified ought evidently to be correctly and carefully drawn. They should be made payable to the orders of the proper parties, and if the names of the parties have not yet been ascertained, the checks should be made payable to the orders of the drawers, and afterwards indorsed by them to the orders of the proper parties. Thus if Mary J. Doe has purchased a piece of real estate through her brokers, and does not know the correct name of the vendor, she should draw her check payable to the order of her own name, "Pay to the order of Mary J. Doe," have it certified, and at the closing of the title to the real estate, having learned that the name of the vendor is Richard Roe, she should indorse the check, "Pay to the order of Richard Roe, Mary J. Doe." The same method may be used when it is necessary to carry certified checks about the person, although such a proceeding may wisely be avoided except when it is made necessary by special circumstances.

The temptation to steal or forge indorsements upon certified checks is naturally greater than in the case of ordinary

checks, because the possibility of non-payment, and that the thieves or forgers will take their risks for nothing, is practically eliminated by the certification. Moreover, banks, having bound themselves by certifying checks, will not, except under unusual circumstances, refuse to pay the checks, even though requested to stop payment by the drawers or by other interested parties. These are reasons sufficient to induce extraordinary care in the handling of certified checks; they should not be construed, however, as unfavorable to certified checks, nor as intimating that ordinary checks may be safely handled with a less degree of caution.

Checks which are drawn by banks (commonly called *cashiers' checks*, because they are commonly signed by the cashiers of the banks) are usually regarded as equivalent to certified checks, since the banks which draw them are, as a matter of course, responsible for the payment of them. The suggestions which have been made for the cautious handling of certified checks will therefore apply in all respects to cashiers' checks.

By the indorsement of a check is meant the writing upon the back of the check, by the payee, of an order for the payment of the check to some other party. The effect of an indorsement is to make the new party an indorsee, or, in fact, a new payee. The original payee can no longer collect the check, because by the indorsement all rights to the check have been assigned to the indorsee. The drawer of the check and all indorsers (generally in the order of their indorsement, in point of time) are responsible to the holder for the payment of the check, unless the indorsements shall be conditional or qualified, as will be hereafter explained; and an indorser who has been compelled to make good a check will have a remedy against the other indorsers, and of course against the drawer.

An *indorsement in full* is made by writing the words "Pay to the order of John Doe" (John Doe being the indorsee) and signing the name of the indorser across the back of the check. This is the correct and usual style of indorsement and should be used always except in some special cases

which will be mentioned hereafter, since it insures payment to the proper parties and compels indorsees to indorse the checks before they can be collected.

An *indorsement in blank* is one in which simply the name of the indorser is written upon the back of the check, without other words. Such an indorsement is an implied order to the bank to pay the check to any person who may be the holder, and practically transforms the check from one which is payable to the order of a designated person to one which is payable to the bearer. Strictly speaking, no further indorsements are necessary for the payment of a check which has been indorsed in blank, although it may pass through a dozen hands before reaching the bank; nevertheless banks sometimes require persons presenting such checks for payment, to indorse them, chiefly as an assurance that the checks have been regularly and properly obtained.

The same caution should be exercised with checks which have been indorsed in blank as has been suggested with regard to checks which are payable to the bearer.

A *qualified indorsement* is one which limits or qualifies the liability of the indorser. Thus where an indorser shall be unwilling to assume liability upon a check, she may (provided the indorsee will accept such an indorsement) relieve herself of liability by indorsing the check, "Pay to the order of Richard Roe, without recourse, Mary J. Doe," or, "Mary J. Doe, without recourse." So when a doubtful check is to be deposited, in order to avoid the payment of possible protest fees the indorsement may read, "For deposit for collection, Mary J. Doe," or, "Pay to the order of the Safe National Bank, New York City, for collection, Mary J. Doe."

Indorsements may also be *restrictive*, that is, they may be so worded as to restrict the payment of the checks to some certain parties, as where checks, intended to be deposited, are indorsed, "For deposit," "For deposit only," or, "For account of"; in such cases the banks in which the checks are deposited will be restricted to the collection of the checks from the banks upon which they are drawn.

In a strict sense an indorsement in the words "Pay to

Richard Roe," without the words "or order" or "order of," will have the effect of restricting the payment of the check to Richard Roe personally, as will be the case if a check shall be drawn payable to "Richard Roe"; but in practice, in view of the fact that the drawer of a check will as a general rule have no preference between payment to the payee and payment to any other person whom the payee may designate by his indorsement, banks will often consider such indorsements as oversights, and pay such checks to the orders of subsequent indorsers as in ordinary cases. It must be said, however, that there is seldom if ever any legitimate object to be gained by such experiments in the methods of business and this statement is assuredly a sufficient reason for their uniform avoidance.

An *accommodation indorsement* is one which is made by a person who has no direct interest in the check, but who indorses it simply to lend credit to the check as an accommodation to the drawer. A common case of accommodation indorsement arises in the following manner: Suppose that Anna Williams shall wish to purchase goods of Richard Roe with a check which cannot be certified (because her bank balance is not large enough, or it may be because she cannot reach her bank without considerable difficulty), and that Richard Roe shall refuse to accept the check on the ground that he does not know Anna Williams, or that he does not believe the check to be good. Anna Williams may then ask her friend Mary J. Doe (whom Richard Roe knows to be a person of responsibility) to indorse the check as an accommodation. If Mary J. Doe shall be willing, and in many cases it may be said with equal propriety, sufficiently careless, to assume the responsibility for the check, the two indorsements should read, "Pay to the order of Mary J. Doe, Anna Williams," "Pay to the order of Richard Roe, Mary J. Doe." Accommodation indorsements (more common on bills of exchange and promissory notes) are sometimes necessary for persons who are actively engaged in commercial business, but they have often been the causes of loss and financial ruin; requests for such accommodations, therefore, should

meet with prompt and positive refusals from those for whose instruction this volume has been written.

The first indorsement upon a check should be made by writing across the back of the check, about one-third way down, and from the top of the check toward the bottom, the words of the indorsement and the indorser's name. An indorsement which is written at the extreme end of a check may be easily torn off by some mischievous or dishonest person, and one which is written too far down upon a check will not allow sufficient room in the proper places for subsequent indorsements.

Properly arranged indorsements will read from the tops toward the bottoms of the checks upon which they are written. This has become an established rule, because it is evidently necessary that indorsements shall follow each other in regular order, all reading in the same direction, and the general practice among business men when reading indorsements is to turn checks in such a manner that indorsements which have been written according to the rule will then appear in the most convenient positions. Many indorsements, especially those made by persons who are generally unacquainted with the methods of business, are wrongly written and are thus the causes of considerable inconvenience to persons through whose hands they necessarily pass; there seems to be, also, some difficulty in understanding this apparently simple matter. For a practical illustration, let us suppose that in Fig. 1 there is a small circular hole represented by the small circle at the top of the check and near the left-hand corner. The back of the check with the several indorsements will then appear as represented in Fig. 5, the small circle at the left still representing the supposed hole at the top of the check. A check will be in the proper position for indorsement if the following method of turning shall be employed: a person who is about to indorse a check should take it in her left hand, grasping it at the left end, and, holding it face toward her and right-side up, turn the top of the check toward her, at the same time revolving the right end toward her; this

movement will bring the back of the check uppermost with the top on the left hand.

If, notwithstanding the regular rule, the first indorsement upon a check shall have been written wrongly, all subsequent indorsements must also be written wrongly; otherwise the general inconvenience caused by the first error will evidently only be increased by efforts which are intended to be in the way of correction.

In indorsements the names ought to correspond with the names of the indorsers as written and spelled in the bodies of the checks or in previous indorsements. Thus, if a check shall be drawn (or indorsed) payable to the order of "M. J. Doe," it should be indorsed "M. J. Doe," not "Mary J. Doe" or "Mary Johnson Doe." But if checks are intended to be deposited in banks, the final indorsements must correspond with the names and spelling of the signatures at the banks. Hence if the above-described check shall be indorsed for the purpose of depositing to the credit of Mary J. Doe in the Safe National Bank of New York City, the indorsements, properly written, will read: "Pay to the order of Mary J. Doe, M. J. Doe," and "For deposit only, Mary J. Doe"; or "Pay to the order of Mary J. Doe, M. J. Doe," and "Pay to the order of the Safe National Bank, New York City, Mary J. Doe." Similarly, if in a check the name of a payee shall be misspelled, or incorrectly written (unless the variation shall be so great as to leave the real payee in doubt, in which case the check should be returned to the drawer for correction), the indorsement should include both the incorrect and correct names. For example, suppose that a check which is intended for Mary J. Doe shall be, by mistake, drawn payable to the order of Mary J. Dow; the proper style of indorsement (supposing that the check is to be paid to Richard Roe) will be, "Pay to the order of Mary J. Doe, Mary J. Dow," and "Pay to the order of Richard Roe, Mary J. Doe." If a check shall be made payable to the order of "Mary J. Doe, Extrx." ("Agent" or "Trustee"), the first indorsement must include the necessary additional word; and if a check shall be drawn payable to the order of Jane

W. Doe, and the bank-account shall be kept by Mary J. Doe as Jane's attorney in fact, the check (to be deposited in the Safe National Bank) must be indorsed, "Pay to the order of the Safe National Bank, New York City, Jane W. Doe, by Mary J. Doe, Atty. in fact"—"Atty.," or "Attorney in fact," as the signature at the bank may be.

In case of the loss or theft of a bank check, the holder who has lost it should immediately notify the bank upon which it is drawn, giving a careful description of the check, with the number, date, amount, drawers' and indorsers' names if possible, and requesting the bank to stop payment upon the check and to hold it, when presented, for the rightful owner. The drawer also should be notified of the loss and should be requested to stop the payment of the check at the bank. In such a case, if the check has been drawn or indorsed in such a manner that a forged indorsement will be necessary before it can be collected, the notice to the bank will probably be successful; but if the lost check has been indorsed in blank, or drawn payable to the bearer, the loss may fall (and very justly) upon the person who has carelessly lost it or suffered it to be stolen.

When the payment of a check, at the bank upon which it is drawn, is refused (the check is dishonored) because the balance of the drawer is insufficient, the check will be returned to the person presenting it with the letters "N. G." (not good) written upon the face. When payment is refused because the drawer has no account at all at the bank upon which the check is drawn, the returned and dishonored check will bear upon its face the words "No account."

A dishonored check is said to be *protested* when a notarial certificate, to the effect that a notary-public has presented the check for payment, that payment has been refused, and that he therefore protests against the drawer and indorsers for the payment of the check and costs, is attached to the check. The object of the protest is to furnish official evidence of the non-payment; it is used (in connection with checks) principally upon dishonored checks when the holders of the checks and the banks upon which they are drawn are

in different States, and is usually accompanied by notices to the indorsers that the check has been protested and that the holder looks to them for payment.

The bank check, unlike other negotiable instruments, is said to die with the drawer, or, in other words, banks have no authority to pay checks after the deaths of the drawers, although the debts for which the checks were given may legally be collected from the estates of the deceased drawers. The custom (which is sometimes made use of between husbands and wives in order to provide the survivor with funds for immediate expenses, in case of the sudden death of the one keeping the bank-account) of drawing checks which are intended to be used only in case of the deaths of the drawers, is therefore entirely improper.

When making a deposit in a bank the procedure should be as follows : (1) A careful and explicit memorandum of the items making up the deposit should be made in the check-book, with the amounts of each item and the sum-total of the deposit, as will hereafter be explained and illustrated. (2) All the checks to be deposited should be properly indorsed, the last indorsement on each check being, " For deposit only," with the signature of the depositor. This style of indorsement is undoubtedly proper ; it must, however, be stated here that banks very generally object to the indorsement in question as being restrictive. When such objection shall be offered, checks which are intended to be deposited should be indorsed in the ordinary manner to the order of the banks, thus, for example : " Pay to the order of the Safe National Bank, New York City, Mary J. Doe." (3) A deposit ticket should be properly made up by writing upon it, in the places which are provided for them, first the sum of all coins or specie contained in the deposit, next the sum of all the bank-notes or bills, and lastly the amount of each separate check, with the sum-total of the deposit, as is shown by the deposit ticket represented in Fig. 6. (4) The deposit ticket, checks, and bills should be placed in the bank-book, at the page where the entry of the deposit is to be made. (5) All, together with the specie of the deposit, should then

be taken to the bank and handed in at the window of the receiving teller, the coins or specie being laid upon the small shelf or platform at the window at one side of the bank-book.
 (6) The gross amount of the deposit having been entered by

Pay to the order of
 Sarah Atkins
 George Williams

Pay to the order of
 Roe & Doe
 Sarah Atkins

Pay to the order of
 The Security Bank
 Boston Mass
 Roe & Doe

FIG. 5.

Deposited By			
Mary J. Doe			
January 10 th 1897			
IN THE SAFE NATIONAL BANK			
SPECIE		32	07
BILLS		152	
CHECKS		7	82
		136	20
		2	109 17
		<hr/> 2 437 26	

FIG. 6.

the teller in the bank-book, and the book having been returned to the depositor, the entry in the book should be examined for the purpose of making sure that it corresponds with the sum-total of the deposit in the check-book and upon the deposit ticket.

The ordinary banking hours are from ten o'clock in the

morning until three in the afternoon, the busiest times ordinarily being shortly after the time of opening and shortly before the time of closing. The business of those who are at liberty to choose their times will, therefore, be facilitated by going to their banks at times which are considerably after or before the respective hours of opening and closing.

As has been remarked in the earlier pages of this volume, check-books which are properly kept will prove to be references of great value to persons of regular and systematic methods, while, if improperly kept, they may prove to be continual sources of annoyance and trouble. The common experience of lawyers seems to indicate that in many cases check-books (sometimes even among so-called business men) are very poorly kept, and that confusion of accounts and other difficulties often follow, to the material advantage of lawyers indeed, although as much cannot be said for the owners of the check-books. It is therefore considered necessary to explain and illustrate at some length the manner in which check-books ought to be kept in order that none of the advantages which properly belong to them shall be lost.

Check-books are, as the name indicates, books containing blank checks, which are issued by the banks for the use of their depositors. They are printed with one, two, three, or even a greater number of checks on each page (those having three checks to the page will probably be found most convenient), each check being usually punctured along its edges in order that it may be torn out without difficulty, the pages being somewhat longer than the checks and having a stub or stump for dates, numbers, and memoranda opposite each check, so that when the checks are torn out only the stubs remain. If the checks are not punctured along their edges, a flat, sharp ruler or thin metallic tearer may be used to tear the checks nicely from the books.

The next following pages represent the first few pages of a check-book with memoranda of deposits and checks, the corresponding checks necessarily having been torn out and used, and the first of these pages representing the fly-leaf at the beginning of the check-book.

SAFE NATIONAL BANK OF NEW YORK CITY.

First deposit, January 2, 1895.

John Roe & Co., rent of store 163 Narrow St.,	
New York, for Jan., 1895 	\$216.66
Richard Doe, six mos. int. on his bond to Jan. 1,	
1895 	500.
Jane Williams, purchase price of house and lot	
239 Jones St., N. Y. City, this day sold to	
her — <i>Principal</i>	9,000.
	<hr/>
	\$9,716.66

Jan. 18th.

Wm. Johnson, rent of store 165 Narrow St.,	
N. Y. City, for Jan., 1895 	216.66
	<hr/>
	\$9,933.32

<u>No. 1.</u>		
<u>New York, Jan. 14, 1895.</u>		
<u>Geo. W. Miller & Co. (Silver St., N. R., N. Y. City), 5</u>		
<u>tons nut coal @ \$4.50, and 10 tons furnace coal @</u>		
<u>\$4.50</u>	67	50
<u>No. 2.</u>		
<u>New York, Jan. 14, 1895.</u>		
<u>Dr. Thomas Clark (916 W. 73d St., N. Y.), professional</u>		
<u>services June 15, 1894, to date</u>	54	
<u>No. 3.</u>		
<u>New York, Jan. 16, 1895.</u>		
<u>Henry T. Jones, Treas. (922 W. 70th St., N. Y. City), pew</u>		
<u>rent Western Cong. Church, N. Y. City, six mos. to</u>		
<u>Jan. 1, 1895</u>	100	
	221	50

1895.					
Jan. 19th.			9	933	32
Thompson & Son (62 April St., Boston), rent of bldgs. 926 & 932 March St., Boston, for Jan., collected by them as agents	195	83			
Coupons U. S. 4 % Bonds, six mos. int. to Jan. 1, 1895	200				
John Rider, price of horse "Bill" sold him Jan. 18th	105				
Watson & Roe (18 Wide St., N. Y.), on acct. of rents of N. Y. property for Jan., 1895, collected by them as agts.	650				
Jan. 27th.			1	150	83
Watson & Roe (18 Wide St., N. Y.), bal. of rents, N. Y. property for Jan., 1895, collected by them as agts., less commissions	632	17			
Chas. Tolley (132 Narrow St., N. Y.), ground rent of lots 132 & 134 Narrow St., N. Y., for quarter ending Dec. 31, 1894	1	200			
			1	832	17
			12	916	32
			+		

\$9,711.82.	221	50
(Certified.)		
No. 4.		
New York, Jan. 20, 1895.		
Edwd. B. Wilson (Brownville, Conn.), amt. loaned him,		
1st mtg., 5 yrs., 5%, his bond, on house and lot 842		
W. 83d St., N. Y.	9,000	
(Principal.)		
(See deposit Jan. 2, 1895.)		
No. 5.		
New York, Jan. 21, 1895.		
Cash, for household expenses	100	
No. 6.		
New York, Jan. 21, 1895.		
Hobson & Co. (12 March St., Boston). Ins. prems. on		
bldgs. 926 & 932 June St., Boston, each \$5,500, @		
1%. Expire Jan. 20, 1898	110	
	9,431	50

1895.					
Feb. 3d.			12	916	32
Frugality Savings Bank, N. Y. Income saved last year, and six mos. int. on part to Jan. 1, 1895			1	002	04
(Principal.)					
Feb. 4th.					
Jones & Co. (291 Narrow St., N. Y.), Royalties on my decd. husband's book, "History of New England," Jan. 1, 1894, to Jan. 1, 1895 . . .	275				
George Henderson, quarter's ground-rent of lot 977 W. 38th St., N. Y., to Feb. 1, 1895	250				
				525	
			14	443	36

Banks—The Bank-Account

49

\$3,484.82.	9,431	50
<u>No. 7.</u>		
<u>New York, Feb. 3, 1895.</u>		
<u>Mary Brown (978 E. 35th St., N. Y.). Dressmaker's bill</u>		
<u>for myself from May 1, 1894, to date</u>	176	19
<u>No. 8.</u>		
<u>New York, Feb. 3, 1895.</u>		
<u>Bilson & Co., groceries from Jan. 1, 1895 to date</u>	41	67
<u>No. 9.</u>		
<u>New York, Feb. 5, 1895.</u>		
<u>Wright & Sons (908 E. 22d St., N. Y.). Carpenter work</u>		
<u>on houses in W. 72d St. N. Y.—2 storm doors, cellar</u>		
<u>stairs, etc.</u>	232	15
	9,881	51

The most conveniently arranged check-books are those having two sets of lines ruled on the backs of the stubs (on the pages which are to be used for the memoranda of deposits), as is shown in the preceding pages, the two columns nearest the centres of the pages being intended for the dollars and cents of the separate items making up the deposits, and the other two columns for the total amounts of the various deposits. When a check-book contains only one of these sets of lines (that which is intended for the total amounts), the several items of the deposits may be put down outside of the ruled columns (as on the fly-leaf represented on page 44, imagining the totals \$9,716.66 and \$216.66 to be in the ruled columns); otherwise mistakes, due to the confusion of figures, are likely to occur in adding up the columns of totals.

The names of the banks which issue the check-books usually do not appear in the books except upon the faces of the checks, and consequently when all the checks have been torn out, nothing will remain in the books to indicate the names of the banks. It is therefore a convenient practice to write the names of the banks on the fly-leaves or first pages of the check-books, as is shown on page 44. It is also well to indicate the time of opening an account at a certain bank by marking the opening deposit "First deposit."

When a page of checks shall be used up, the columns of checks and deposits should be added up and the sums carried over to the tops of the respective next following pages; the balance (obtained by subtracting the sum of the checks from the sum of the deposits) should also be put down in small figures at the upper left-hand corner of each page of checks. When adding up the columns of checks and deposits, the amounts which have been carried over from the preceding pages, and placed at the tops of the pages in question, must of course be included in the additions.

The balances, which are written in small figures at the top of each page of checks, are the actual balances at the bank to the credit of the depositor. It is most necessary that these balances shall be correct, else the depositor may be deceived and overdraw her account. The follow-

ing is an excellent method of verifying the balances, which will remove all danger of mistakes: The balance is first obtained in the regular manner, by subtracting the sum of the checks from the sum of the deposits, and a memorandum (not in the check-book) is made of its amount; it is obtained a second time by adding the sum of the deposits which have been made since the last previous balance, to the last previous balance, and from this sum subtracting the sum of the checks which have been issued since the last previous balance. Thus, referring to pages 46 and 47, the balance which is first to be obtained will be $\$12,916.32 - \$9,431.50 = \$3,484.82$. The sum of the deposits which have been made since the last previous balance and the last previous balance will be (pages 46 and 47) $\$1,150.83 + \$1,832.17 + \$9,711.82 = \$12,694.82$, and the sum of the checks will be $\$9,000 + \$100 + \$110 = \$9,210$. The latter subtracted from the former will give $\$12,694.82 - \$9,210 = \$3,484.82$, which corresponds with and verifies the balance which has been first obtained, which balance may then be entered in the check-book (at page 49) correct.

A uniform and invariable rule should be adopted that all moneys which shall be received, from whatever source, and also all moneys which shall be disbursed, shall go through the bank in the regular manner; that is, that all checks and cash which shall be received shall be deposited in the bank, and that all bills and expenses shall be paid either with checks, which are drawn on the bank, or with cash which has been drawn from the bank. Also all items of principal should be distinctly marked "principal" in the check-book, as shown on pages 44 and 47.

The application of these rules will be the means of making check-books available as perfect accounts of incomes and expenditures, and will enable the owners to know without difficulty the exact amounts of these items at all times and for all periods. Thus, from the foregoing pages representing the stubs of a check-book, the exact income which has been received from January 2, 1895, to February 4, 1895 (the items of principal being, as a matter of course, omitted),

will be $\$716.66 + \$216.66 + \$1,150.83 + \$1,832.17 + \$525 = \$4,441.32$, and the exact expenditures will be $\$67.50 + \$54 + \$100 + \$100 + \$110 + \$176.19 + \$41.67 + \$232.15 = \$881.51$. If, disregarding the regular rule, the check of George Henderson for \$250 ground-rent (deposited on page 48) has been given to Wright & Sons for the payment of the bill (which was properly paid by check No. 9), and the change or difference had been received in cash, neither of these items would appear in the check-book, and the book, as an account-book and record, would be sadly deficient.

All memoranda in check-books should be made as explicit and comprehensive as possible, using abbreviations whenever they will be necessary for the purpose of saving space, and without danger of misunderstanding. Addresses, dates, rates of interest, times of expiration of insurance policies and mortgages, and details of transactions in business, are all valuable data which a properly kept check-book will contain.

Let us now suppose that the owner of a check-book shall purchase a house under the following circumstances: The price of the house is \$9,000; there is a mortgage upon the house for \$4,000, with six months' interest unpaid, which incumbrance the purchaser desires to discharge (and may because the mortgage is due); the lawyer's bill for examining the title is \$125. Upon closing the title the purchaser must give three checks, the first (No. 165) to the mortgagee for the amount of the mortgage and interest, the second (No. 166) for the balance, which will be due the vendor, after deducting the amount of the mortgage and interest, and the third (No. 167) to the lawyer in payment of his bill. The stubs corresponding to these checks will give a complete record of the entire transaction if they shall be filled up in the manner which is indicated on page 53.

Memoranda upon stubs referring to other checks or deposits will often be useful as completing the records of transactions, or as indicating the courses of portions of principals through various investments. The preceding examples will illustrate the first of these objects, while the second will be

<p style="text-align: right;"><u>No. 165.</u></p>		
(Certified. Principal.)		
<u>New York, July 10, 1894.</u>		
<p><u>Mary J. Doe. Endorsed to John W. Taylor (Taylortown,</u> <u>Pa.) for mortgage \$4,000, and interest, 6 mos. to date</u> <u>5 % = \$100, on house No. 949 W. 95th St., N. Y. City,</u> <u>purchased of Jane K. Smith (949 W. 98th St., N. Y.).</u> <u>See checks 166, 167.</u></p>	4,100	
<p style="text-align: right;"><u>No. 166.</u></p>		
(Certified. Principal.)		
<u>New York, July 10, 1894.</u>		
<p><u>Jane K. Smith. Balance of purchase price of house, 949</u> <u>W. 95th St., N. Y. City (\$9,000 — \$4,100 = \$4,900).</u> <u>See checks 165, 167.</u></p>	4,900	
<p style="text-align: right;"><u>No. 167.</u></p>		
(Principal.)		
<u>New York, July 10, 1894.</u>		
<p><u>William Blackstone (18 Narrow St., N. Y.). Bill for</u> <u>examining title to above premises. Total cost of</u> <u>house \$4,100 + \$4,900 + \$125 = \$9,125. See checks</u> <u>165, 166.</u></p>	125	

understood after an examination of pages 44 and 47, or more clearly by means of the following illustration :

Suppose that, on June 15th, a house and lot shall have been sold by the depositor, and the check for the purchase price, five thousand dollars, deposited in the bank ; that on June 20th the depositor, not having anticipated a quick investment, shall have drawn the money from the bank (by check No. 250), and shall have deposited it in a trust company ; that in December a good investment in bond and mortgage shall have been found, and the money, on December 15th, taken from the trust company and again deposited in the bank ; and that on December 30th, the five thousand dollars shall have been paid to the mortgagee by check No. 349. There should be, in this case, four memoranda in the check-book, extending over a period of six months and relating to this particular sum of five thousand dollars : (1) The deposit of June 15th ; (2) the stub of check No. 250 ; (3) the deposit of December 15th ; and (4) the stub of check No. 349. By a proper reference upon these memoranda from one to the other, the entire journey of the five thousand dollars in question and its present resting-place will be clearly indicated.

All checks which are received should be at once deposited — on the day of receiving them (or at least on the next), if at all practicable — for, if the final payment of a check shall be unreasonably delayed, and the bank upon which it is drawn shall fail in the meantime, the loss ordinarily will fall upon the holder, whose negligence will have been the principal cause of the non-payment.

Sometimes, because of the inconvenience of remembering the numbers of blank checks, which are carried about on the person, the numbering of the checks is entirely dispensed with. Such a practice is by no means to be recommended. The careful and regular numbering of all checks will prove to be useful for purposes of reference and identification, and for the quick detection and possible prevention of forgeries. The first check which shall be drawn may be properly and honestly numbered 1, since no benefit will come from the practice (quite common, and certainly smacking of dishonesty)

of giving to the first check a large and businesslike number, such as 1000, 3000, or 5000.

A check-book, kept in the manner which has been indicated, will often prove to be valuable as a reminder of future obligations, expenditures, or collections. Thus a glance through the memoranda of checks and deposits which have been made during the previous year may inform the depositor that on a certain date interest must be paid or collected, that insurance policies will expire, and must be renewed at certain times, or that taxes will be due and payable at certain seasons of the year.

In a similar manner, past events of interest may be called to mind by looking over the pages of old, used-up check-books. How long has one lived in a certain house? When was such a building erected? For how many years has one ridden in a particular carriage?—these and many other equally interesting and important questions may be answered, and accurately answered, by the faithful and faithfully kept check-book.

At frequent intervals (if the account is very active: every month or six weeks, generally speaking, when each page of the book is nearly filled, and always when requested to do so by the bank) the bank-book must be left with the bookkeepers at the bank to be balanced. This the bookkeepers do by entering, upon the pages opposite to those which are used for the entry of deposits, the amounts of all the checks which have been drawn by the depositor since the last balancing of the bank-book (all of which checks have been, in the meantime, returned to the bank for final payment by the various holders or by their banks), and by writing in the book the balance, which is obtained in the usual manner. When, a few days afterward, the depositor calls at the bank for the balanced bank-book, the book (sometimes also a separate memorandum of the items of the checks and deposits) and all the checks which have been issued by the depositor since the last balance (which checks are now called *vouchers*, and are stamped "paid," or otherwise marked by cutting crosses through them to indicate that they have performed

1896.			8	200	46
October 10th.					
John Roe & Co., rent of 163 Narrow St., N. Y. City, for Oct., 1896 . . .	216	66			
Wm. Johnson, rent of 165 Narrow St., N. Y. City, for Oct., 1896 . . .	216	66		433	32
			8	633	78
Oct. 15th. Balance.			4	005	45
Oct. 17th.					
Watson & Roe, on acct. of rents, N. Y. City property, for Oct. . . .				650	
			4	655	45

\$5,139.22.	3,061	24
<u>No. 296.</u>		
<u>New York, Oct. 10, 1896.</u>		
<u>Receiver of Taxes. Taxes on 995, 997, 999 W. 73d St.,</u>		
<u>N. Y. City, for 1895</u>	1,522	09
<u>No. 297.</u>		
<u>New York, Oct 11, 1896.</u>		
<u>James Ogden (84 Narrow St., N. Y. City), commission for</u>		
<u>sale of house, 922 W. 98th St., N. Y. City, 1 % on</u>		
<u>\$4,500</u>	45	00
	4,628	33
<u>Balance</u>	4,005	45
	8,633	78
<u>No. 298.</u>		
<u>New York, Oct. 20, 1896.</u>		
<u>Rogers & Son (132 Wide St., N. Y. City). Bill for gas</u>		
<u>fixtures in building 976 W. 101st St., N. Y. City</u>	286	42
	286	42

1896.			8	200	46
Oct. 10th.					
John Roe & Co. Rent of 163 Narrow St., N. Y. City, for Oct., 1896	216	66			
Wm. Johnson. Rent of 165 Narrow St., N. Y. City, for Oct., 1896	216	66		433	32
			8	633	78
Oct. 15th. Balance.			5	527	54
Oct. 17th.					
Watson & Roe, on acct. of rents, N. Y. City property, for Oct.				650	
			6	177	54

\$5,139.22.	3,061	24
<u>No. 296.</u>		
<u>New York, Oct. 10, 1896.</u>		
<u>Receiver of Taxes, for taxes on 995, 997 & 999 W. 73d</u>		
<u>St., N. Y. City, for 1895</u>	1,522	09
<u>No. 297.</u>		
<u>New York, Oct. 11, 1896.</u>		
<u>James Ogden (84 Narrow St., N. Y. City). Commission</u>		
<u>for sale of house, 922 W. 98th St., N. Y. City, 1 % on</u>		
<u>\$4,500</u>	45	
<u>Less check 296 not yet in</u>	4,628	33
	1,522	09
<u>Balance</u>	3,106	24
	5,527	54
	8,633	78
<u>Check No. 296</u>	1,522	09
<u>No. 298.</u>		
<u>New York, Oct. 20, 1896.</u>		
<u>Rogers & Son (132 Wide St., N. Y. City). Bill for gas</u>		
<u>fixtures in building, 976 W. 101st St., N. Y.</u>	286	42
	1,808	51

their work and are of no further value) are returned to her. At the earliest opportunity the vouchers should be examined and compared with the stubs in the check-book, in order to guard against mistake and forgery, and the check-book should be balanced to correspond with the bank-book.

The balancing of the check-book should be done by adding up all the deposits which are included in the balance of the bank-book (or all the deposits which have been made since the last balancing of the bank-book), without reference to the private balances which have been written upon each page of stubs in the check-book as before suggested, and all the amounts of the vouchers which have been returned by the bank. The difference between these two sums must correspond exactly with the balance obtained by the book-keepers in the bank-book, else there must be a mistake, or possibly a forgery, which must be at once inquired into.

For a practical illustration of the somewhat confusing process of balancing the check-book, we may suppose pages 56 and 57 to represent two pages, respectively, of memoranda of deposits and stubs in a check-book ; that the bank-book has been (on October 13, 1896) left at the bank to be balanced ; and that it has been returned balanced to October 15th, the balance being \$4,005.45.

As soon as possible after receiving the balanced bank-book, the vouchers must be compared with the stubs in the check-book and found to be correct ; that is, all the checks which have been issued since the last bank balance are present without alteration, and there are no fraudulent checks. The deposits which are included in the bank-book balance (all subsequent to the last bank balance) must then be added up, and the sum found to be \$8,633.78, which corresponds with the figures in the bank-book. Next, the sum of the stubs corresponding to the vouchers which have been returned is found to be \$4,628.33, which also corresponds with the figures in the bank-book, and on the memorandum sheet, if there be one. The subtraction of the latter sum from the former will give the balance which is contained in the bank-book, \$4,005.45, and the figures may then be

written (in red ink, or with lines drawn under them to distinguish them) in the check-book in the manner which is indicated in the illustrations.

The practical effect of the bank balance is to complete the account up to the date of the balance, and the account thereafter proceeds in the same manner as if it were an entirely new one, beginning with a deposit which is equal to the balance. Thus, in the illustrations of pages 58 and 59, after the deposit of October 17th and the stub for check No. 298 has been filled out, the private balance to be written at the top of the next page of stubs will be $\$4,655.45 - \$286.42 = \$4,369.03$.

It sometimes happens that one or more of the checks which have been issued since the last balance (usually checks which have been sent to a distance, or the collecting of which has been carelessly or otherwise delayed by the holders) have not yet been returned to the depositor's bank for payment, and consequently the bank cannot return the missing vouchers to the depositor with the balanced bank-book. In such a case, the bank of course has no knowledge of the missing checks, and therefore can take no account of them in the balance, which fact has the effect of making the balance in the bank-book larger than it should be by the sum-total of the missing checks. An examination of the vouchers will show at once what checks, if any, are missing, and when balancing the check-book the sum of the missing checks must be deducted from the sum of the stubs (which is equivalent to adding it to the check-book balance) in order that the balances in the bank-book and check-book may correspond. The missing checks will, as a matter of course, sooner or later turn up at the bank for payment, and will then be charged against the depositor in the next balance. They must, therefore, be entered again on the check-book stub in the same manner as if new checks had been drawn. Thus, for an illustration, suppose that the check No. 296 (page 59) has not been returned with the vouchers and balanced bank-book. The balance in the bank-book will then be $\$4,005.45 + \$1,522.09 = \$5,527.54$, and the balancing of the check-book,

in order to correspond, should be done in a manner which is indicated on pages 60 and 61. The private balance, to be written at the the top of the next page of stubs, will be, in this case, $\$6,177.54 - \$1,808.51 = \$4,369.03$, or precisely the same as if the check had not been missing. If, instead of one missing check, there shall be several, the manner of balancing the check-book will be the same, except that the sum-total of all the missing checks (the memorandum giving their numbers) must be deducted, and subsequently re-entered upon the stub.

In case of the accidental destruction or permanent loss of a check which has been drawn by the depositor, the fact must be noted in the check-book, either by erasing the amount of the lost check (making proper memorandum upon the stub), so that the amount will have no effect upon the balance, or by deducting the amount of the check from the balance, and noting that the check has been destroyed.

When a check which has been deposited has been returned to the depositor's bank dishonored ("N. G." or "No account"), the bank should give immediate notice to the depositor to make the check good. This may be done by the depositor going at once to the bank, drawing her own check to the order of the bank for the amount of the dishonored check, and exchanging the checks with the bank, afterward taking the necessary measures to collect the amount from the drawer or indorsers of the dishonored check. In this manner the balance in the check-book will be made to correspond with that at the bank, without other calculation or memorandum than that upon the stub of the check which makes good the dishonored one, since the bank will not charge the dishonored check against the depositor. Instead of this method of making dishonored checks good, banks often charge the amounts of the dishonored checks against the persons who have deposited them, giving the depositors notice of the facts. In such a case, the balance at the bank will necessarily be less than the balance in the check-book by the sum-total of the dishonored checks. In order to correct this discrepancy, the amount of the dishonored checks

must be deducted from the sum of the deposits in the check-book. To illustrate such a case : Suppose that the check of John Roe & Co., deposited October 10, 1896 (page 58), has been returned not good, and that the amount, \$216.66, has been charged against the depositor by the bank. When the bank-book has been balanced at the bank the balance will be $\$4,005.45 - \$216.66 = \$3,788.79$. The check-book must therefore be balanced in the following manner : from the sum \$8,633.78 deduct the amount \$216.66, with the memorandum " less check of John Roe & Co., deposited Oct. 10th, returned N. G., and charged against me." This will make the sum of the deposits $\$8,633.78 - \$216.66 = \$8,417.12$, and the balance in the check-book, $\$8,417.12 - \$4,628.33 = \$3,788.79$, which corresponds with the balance at the bank.

When all the checks in a check-book shall have been used, and nothing but the stubs and covers shall remain, for the purpose of making the book more compact, the covers may be cut off to fit the stubs, and the book laid away for safe keeping with all the vouchers which belong to it. This proceeding may be facilitated by having the bank-book balanced at such a time as to include all the vouchers belonging to it, and no others. The old check-book and its vouchers will then be complete and the account in the new check-book should be commenced by writing at the top of the first page of deposits the amount of the bank balance, with the memorandum, " balance from old check-book," the first check being numbered in continuation of the old book.

If the bank-book has not been balanced at such a time as will exactly complete it (some checks still remaining out, or some of the checks from the new bank-book being included in the balance), the account in the new check-book must be commenced by carrying over, from the old book to the respective pages of the new book the sums of the stubs and deposits, in each case with the memorandum, " from old check-book."

It is the desire of the author that this chapter shall be found to contain all the information, with regard to transactions between banks and depositors, which may be necessary,

and nothing more. Nevertheless, the chapter would be closed with somewhat of reluctance did the author fail to call the especial attention of his readers to the importance of keeping their checks at all times, and under all circumstances, perfectly good. And such a suggestion appears to be necessary because of the prevalence, and it may be the increasing, of a tendency to regard the dishonoring of bank checks, especially if from accidental causes, as common occurrences which may be easily explained to the satisfaction of all except over-punctilious persons.

The dishonoring of a check not only injures the reputation of the drawer with the holder of the check, but publishes the drawer to all the indorsers, and to the banks through which the check may have passed, as a person whose check is worthless. To such persons as may require statements of a so-called practical nature, it must be said that such occurrences as the dishonoring of bank checks which have been drawn by them will amount to real injuries, that they will often work actual losses in the businesses of the drawers, that such occurrences will not pay; and to such persons as are wont to consult first of all their own acute sense of honor, a sufficient statement will be that the dishonoring of their checks, even if known by none except themselves, will not fail to result in self-reproaches which will be difficult indeed for them to endure.





CHAPTER III

SAVINGS BANKS

AS has been suggested, at the beginning of the preceding chapter, savings banks are, properly speaking, benevolent institutions, organized for the purpose of encouraging the saving and accumulation of money. Hence, in theory at least, if perhaps not always in practice, extraordinary precautions are taken by savings banks to guard against loss of funds, and all profits, over and above economical and necessary expenses, are paid to the depositors in the form of interest.

Such being the facts, savings banks are pre-eminently the institutions of the poor. In them the periodical savings of the industrious poor are deposited, in sums which are too small for other investment; and, adding year by year to their deposits the results of their frugality and self-denial they are able, with the aid of the interest paid by the savings banks, to accumulate amounts which are large enough for investment in more permanent and profitable manners.

Thus it is that savings banks may be said to have opened for the poor the road to competence and fortune; and thus it is that many a deserving family has been lifted from poverty to comfort, many a man or woman from vagabondage to respectability and thrift.

Institutions of this kind, wisely and properly managed, are therefore to be considered of the greatest value and benefit to mankind, and should indeed receive the constant and hearty encouragement of all good citizens. Nor should it be forgotten that truly good men have passed, unappreciated by

the many, to their graves, with the sure consciousness that, rewarded only by their own placid reflections, their lives have been spent in the fostering and managing of successful savings banks.

But what language can fitly describe the reverse of these happy results? What of the savings bank which has been mismanaged and brought to failure and ruin! From the grandeur of benevolence, it sinks into a terrible and immeasurable evil. Confiding thousands find their traditions shattered and themselves betrayed. The trusted refuge has become in effect a den of robbers—robbers of the poor and of the artless. The miserable results can scarcely be exaggerated. Poverty, hunger, starvation, despair, insanity, suicide, murder—these may make up the awful train which follows in the wake of a ruined savings bank.

For such important reasons, the law generally undertakes to exercise great care in regulating and directing the management of savings banks. They are organized under the laws of the States in which they conduct business, and all persons are forbidden to transact the business of savings banks without the permission of, and the strict compliance with, the statutes. The laws of the various States, in this respect, are not entirely uniform; but in the more careful and conservative of the States the following regulations may be considered to apply in a general manner:

Specified numbers of incorporators are required, and their characters and responsibilities must be satisfactory to the authorities. The amount of deposits which a savings bank may receive from a single individual or corporation is limited, in order that funds of the bank may not become too large for advantageous investment. Speculation with the funds is strictly forbidden. Loans upon personal security, dealing in promissory notes, bills of exchange, and general merchandise are not allowed. Investment of the funds is restricted to United States bonds, the bonds of certain States, cities, counties, and villages, and mortgages upon real estate (usually not to exceed a certain proportion of the actual value of the real estate). They may own such real estate as is necessary

for business purposes, or as may be obtained by necessary foreclosure, collection of judgments, etc. Regular and sworn reports, giving all necessary information concerning the conditions of savings banks, are required to be made to the State authorities. Certain acts on the part of the directors and officers which are considered to be dangerous to the depositors are made punishable as crimes.

Savings banks which have been long established in conservative States are very generally considered to be as safe and reliable as any class of moneyed institutions. And the statistics with regard to savings banks appear certainly to sustain this general confidence. Thus, according to the report of the Superintendent of Banking of the State of New York, which was published in the newspapers in the year 1897, there had not been at that time a single failure among the one hundred and twenty-nine savings banks of the Empire State during a period of eighteen years.

Of recent years, probably because of the increasing difficulties in obtaining safe investments which will return satisfactory rates of interest, the practice of depositing money in various first-class savings banks, not for the purpose of obtaining interest while seeking more permanent investment, but as permanent investments, to remain indefinitely in the savings banks, has become prevalent to a certain extent among well-to-do people. The three and one half or four per cent. interest, which is commonly allowed by the savings bank, is considered by some investors to be equal in the end to any rate which can be obtained with as little difficulty, when the loss of interest which is due to the idleness of capital while waiting for ordinary investments has been taken into the account.

Such an opinion is certainly not to be gainsaid off-hand ; its proving or disproving may, in fact, depend upon the results of many careful calculations. Upon the general principles of investment (which will be explained in a later chapter of this work), however, the better opinion must be against the expedience of indefinite investments in savings banks.

But, be the mathematical solution of this problem as it may, another and a more generous view of the matter may be deserving of consideration. The effect of large deposits in savings banks upon the rates of interest which the savings banks will, in the future, be able to pay, and the consequent results to the savings of the poor, for whose benefit and advantage savings banks are presumed to exist, are matters which neither the philanthropist nor the economist may entirely disregard.

In obedience to the universal law of supply and demand, the conclusion that an excess of money in the hands of the savings banks must result, either in a lowering of the rates of interest which will be paid by them, or in a generally less conservative investment of their funds, seems to be unavoidable; in either case disadvantage to depositors must necessarily follow.

Probably a large majority of investors will consider such a view of the matter to be an over-sensitive one, far-fetched, beyond what is fairly required of shrewd and energetic managers of property, or even an uncalled-for looking into the future for the purpose of placing difficulties in the way of investments. And it is not to be denied that distant and indirect methods of philanthropy often interfere greatly with that clear perception of business which we find to be so valuable and so necessary. Nevertheless, such investors as may believe the practice which is under consideration to be an evil for which they are unwilling, in any manner, to be responsible, may well be content to make their permanent investments in other directions, leaving generally the savings banks to those for whom alone they have been instituted — the industrious poor.

The selection of a savings bank is a matter of great importance to those who may find it necessary to deposit their money in such an institution. Although the laws of most of the States may honestly undertake to render savings banks safe against failure, in many cases the laws will be found to fall short of a full realization of their good intentions. Savings banks have failed, and will fail, in spite of watchful

legislatures and wise and severe judges. Therefore it will not be sufficient to depend alone upon the restraining and exacting requirements of the law in this respect.

In the first place, only regular savings banks in the most conservative accessible States should be considered, avoiding all co-operative and mutual benefit companies, which profess to act as improved substitutes for savings banks, and avoiding also, when possible, all States the laws of which allow savings banks to invest their funds in personal securities, and other unsafe speculations. In the second place, old, well-known savings banks, having large capitals, and doing business in large cities, should invariably be preferred. The arguments which have been advanced in the preceding chapter with regard to the dangerous influence of small localities upon banks, and the generally unsafe character of small institutions, are to be considered as applicable with equal force to savings banks. Finally, savings banks which fulfil the foregoing requirements, which are managed by officers of well-known integrity and sagacity, and which have passed through numerous panics and business crises without difficulty, approach nearest of all to that ideal of perfect security which is contemplated by, and is in just accordance with, their beneficial purposes..

The usual routine of opening an account at a savings bank may be described as follows :

The proposed depositor presents herself (introducing herself, or, if accompanied by a friend who is acquainted at the savings bank, a brief introduction by the friend is desirable) with the statement that she wishes to open an account by depositing so much money, the amount being mentioned lest there should be objection to it. She then, at the request of the clerk, writes her signature in a book which is kept by the savings bank for that purpose ; gives accurately such further information with regard to age, parents' names, name of husband, children, etc., as may be required by the savings bank for use in case of the death of the depositor ; and hands to the clerk the money which she wishes to deposit. In her turn (announced by the calling of her name)

she receives from the teller a pass-book, in which the amount of the deposit has been properly entered to her credit, and this completes the business of opening the account.

The remarks, concerning signatures, which are contained in the preceding chapter should be borne in mind when deciding upon signatures for use at the savings bank.

The pass-books furnished by savings banks are the only records and evidences of their accounts which are in the possession of the depositors, and must be presented when drawing or depositing money, or when having the amounts of interest calculated and entered.

In form, a pass-book is a simple account-book (the savings bank in account with the depositor), the left-hand pages being used for the entry of deposits and sums of interest, and the right-hand pages for the entry of amounts drawn.

The mere possession of a pass-book is, under ordinary circumstances, considered to be *prima facie* evidence of ownership, and savings banks, in general, will be warranted in paying the money of their depositors to any persons who shall present the pass-books. Proper care should be taken, therefore, to guard against the loss of pass-books. Depositors should make careful notes of the numbers and other designations of their pass-books, and also of the post-office addresses of their savings banks, in order that, in case of the loss of their pass-books, immediate notices may be sent to the savings banks, with instructions to hold the books if presented, and losses may thus be prevented.

In many of the savings banks, the duties of receiving-teller and paying-teller are performed by the same person, assisted, if necessary, by clerks. To the teller, or to one of his assistants, the pass-book must be presented when making deposits and when drawing money.

Deposits in savings banks are made in the following simple manner: The depositor hands the money to be deposited and the pass-book to the teller, or to his assistant, stating that she wishes to deposit so much money (giving the exact amount), and takes her seat to await the entry of the deposit in, and the return of, the pass-book. When the pass-book is

ready for delivery to the depositor, her name is called, and she receives from the teller her pass-book, with the amount of the deposit properly entered, she usually being asked by the teller to repeat the amount of the deposit, in order to guard against mistake.

As a general rule, only money (actual coins and bills) will be received by the savings banks, since their business with their depositors is not to be supposed to include the collection of checks, coupons, drafts, etc. ; but in some cases savings banks make exceptions to this rule, and receive checks on deposit, as accommodations to their depositors. It is advisable, however, even in cases of the latter kind, to facilitate the business of the savings banks by depositing only money, and that in as few bills and coins as can be done conveniently. Drawing money from the savings bank is an almost equally simple process. The pass-book is presented with a statement of the amount of money which the depositor wishes to draw ; a receipt, on the printed form, which is furnished by the savings bank, is signed by the depositor ; and, when the entry has been made, and the money counted out, the depositor receives her pass-book and the amount of money from the teller in the same manner in which she receives her pass-book when making deposits.

As a matter of course, pass-books should be examined immediately upon leaving the tellers' windows, in order to make sure that the entries of deposits or of amounts which have been drawn have been correctly made.

In all cases, except where the contrary shall be made necessary by unusual circumstances, depositors should go personally to the savings banks to transact their necessary business. By this means, the tellers and clerks will learn to know the depositors, thus lessening the danger of paying money to the wrong persons, and removing the danger of losing pass-books through the carelessness of messengers. When, however, the sending of messengers (certainly trusted ones) to the savings banks to draw money shall be unavoidable, orders requesting the savings banks to pay the amounts required to the persons presenting the pass-books, and

authorizing the messengers to sign receipts for the money, should be given to the messengers for presentation at the savings banks. Forms for such orders are quite commonly printed in the pass-books, together with the rules and regulations of the savings banks which issue the books.

The general principles upon which the rates of interest paid by savings banks are determined are as follows: At certain regular periods of the year (semi-annually, on the first days of January and July, for example), the directors and officers ascertain, by a careful balancing of all the accounts, the receipts from various investments of the savings bank since the last interest-day, and the expenses of the management for the same period; and from these the net profit of the business for the period is determined. This profit, divided *pro rata* among the depositors, fixes the rate of interest for the period in question.

It follows from these facts that the rates of interest which are paid by a certain savings bank are not necessarily always the same (although in fact there is seldom any variation, except that, at intervals of several years' duration, the rates have gradually decreased, in conformity with the general rule of decreasing interest from investment), and also that the rates which are paid by different savings banks will vary slightly. This latter fact can not be used safely as a criterion in the selection of a savings bank, since it is possible that, with equal safety of investment, one savings bank may make better profits than another, as well as that one savings bank, in order to increase its profits, may take risks which another savings bank will avoid. Indeed, if there is any definite conclusion to be reached from this variation in the rates of interest which are paid by different savings banks, it must be (in conformity with accepted principles which will be hereafter set forth) that a savings bank which pays a rate of interest which is materially higher than the general average in the vicinity should be avoided as not altogether safe.

The work of balancing the accounts of a savings bank necessarily requires a considerable time, and therefore interest cannot be collected by the depositors until some time after

the regular interest-days. Allowing one month for the work of balancing, and assuming that the regular interest-days are January 1st and July 1st, pass-books should be taken to the savings banks to be balanced, and to have the amounts of interest entered, during the first days of February and the first days of August of each year. If there are frequent entries of deposits and of money drawn, that is, if the accounts are very active ones, the pass-books should be more frequently balanced, on or about May 1st and November 1st, in addition to the regular times which have been mentioned, for instance.

For the purpose of quickly verifying the balance in the pass-book, and also for the purpose of having satisfactory data of the account at the savings bank, in case of any misunderstanding while the pass-book is in the hands of the bookkeepers (albeit very improbable), the items which are necessary for the calculation of interest and of the balance may be copied from the pass-book, and the balance computed by the depositor in her note-book before taking the pass-book to the savings bank to be balanced or for the entry of interest. Upon receiving from the savings bank the pass-book, with the interest entered and the balance recorded, the depositor may, then, quickly compare the figures with those which are contained in her note-book, and may call attention to any discrepancy before leaving the savings bank. If this suggestion shall not have been acted upon before the balancing of the pass-book, the computations of interest and balance ought, at least, to be verified by the depositor in the usual manner, at the earliest opportunity, and the savings bank must be notified at once of any mistake.

The rates of interest upon which depositors in savings banks may calculate, for the regular interest periods which have last passed, are ordinarily announced by notices which are posted in the savings banks some time before the interest-days ; if, however, such information shall be lacking, depositors may, for the purposes of the calculations which have been mentioned, assume that there has been no change in the rates of interest since the last payment.

A general rule among savings banks, with regard to the payment of interest upon deposits, is that interest will not be paid upon all deposits for the exact times during which they have been in the hands of the banks, but only upon such sums as shall have been on deposit during an entire period of time between the last two regular interest-days. Thus, if a certain amount shall be deposited in a savings bank on the 1st day of January (the regular interest-days being January 1st and July 1st), six months' interest on the amount will be due on the first day of the following July ; but, if the deposit shall be made on the 1st day of February, interest will not begin to accrue until the next interest-day (July 1st following), and the depositor will, therefore, sustain a loss of interest for a period of five months. It is obvious from this fact, that, whenever a choice of times shall be possible, deposits in savings banks should be made during the few days prior to the regular interest-days. For the same reason, when it shall be necessary to draw money, if by waiting a short time the money will remain in the savings bank over an interest-day, the drawing should be delayed, if possible, until after the interest-day ; otherwise six months' interest on the amount which shall be drawn will be lost. In some cases, savings banks allow margins of a few days in this respect, in the case of deposits, and announce the fact by properly placed notices, but such cases are to be regarded as exceptional, and cannot be regularly calculated upon.

In conformity with the general rule, when calculating the amount of interest which is due upon a certain deposit, the exact amount which has remained in the savings bank during the entire period of time between the interest-days must be obtained from the figures and the dates in the pass-book, and the interest, at the ascertained rate, must be computed upon this amount. All considerations with regard to the advisability of making deposits in savings banks must take into account this method of paying interest ; else depositors may be grievously disappointed when, upon going to the savings banks for their anticipated amounts of interest, they may learn that very little or perhaps no interest at all is due.

Long-continued, steady accounts, which remain year after year in the savings banks, without being disturbed by the frequent drawing of money, will receive, evidently, the benefit of the interest to the greatest possible extent. Indeed, it is for the purpose of encouraging just such accounts, and of discouraging active or variable accounts, that the peculiar method of paying interest which is common among savings banks has been adopted.

At certain times of sudden financial panic and excitement, large numbers of depositors in savings banks become alarmed, and, seriously apprehending the failure of their savings banks, hasten, without due consideration, to withdraw their accounts entirely, sometimes only to place the accounts in much more dangerous positions. Such a rush of frightened depositors constitutes what is called a "run" upon the savings banks. If a particular savings bank shall be in a properly sound condition, and able to pay in full all the depositors who may demand their money, a run upon the savings bank will, for reasons which have been already explained, result in an enormous loss of interest to the depositors. If, on the other hand, the savings bank shall be unable, upon so short a notice, to pay all of the amounts which may be demanded by the panic-stricken depositors, the run will cause the savings bank, temporarily at least, to suspend payments.

An occurrence of this kind, while unfortunately it cannot fail to increase the alarm of the depositors, a large proportion of whom may be ignorant people, unable to comprehend the real situation, by no means necessarily indicates that the savings bank is insolvent, or that any one of the depositors will lose anything by the suspension. The condition of the savings bank may be perfectly sound, the business may be prosperous in every way, and the funds may be invested with perfect security, and with excellent discretion, and yet, under the press of circumstances, it may be impossible for the savings bank to obtain money quickly enough to supply the importunate demands of the crowd of depositors. We may suppose, for purposes of illustration, that the total amount of deposits in a certain savings bank is two millions

of dollars, and (for the sake of simplicity) that all the funds, except the sum of two hundred thousand dollars, are invested in first-class mortgage loans, and other unexceptional securities. The savings bank is assuredly in a perfectly sound financial condition. Let us suppose, now, that a sudden and unexpected panic shall arise, and that the depositors at the savings bank shall become alarmed to such an extent that, in one business day, one half of the entire amount of deposits shall be demanded. The result of these conditions will be that the savings bank will be compelled to obtain, within a few hours, a large amount of cash in addition to its own available cash, or temporarily to suspend payment. It will be impossible, evidently, for the savings bank to call in any of its mortgage loans in a single day, and the state of the money market may be such that the requisite amount of cash cannot be obtained in any other manner, in so short a time. Therefore, although the payment of all the demands of the depositors would result in a large saving of interest for the savings bank (if the panic shall occur shortly before an interest day, the saving of interest for the savings bank, and the corresponding loss of interest to the depositors, may amount nearly to the sum of twenty thousand dollars), the perfectly sound institution must close its doors to the clamoring depositors and endure for a time the ignominy of suspension.

In order to prevent calamitous occurrences such as have been described, savings banks very generally provide, for their own protection, by-laws to the effect that no amounts of money shall, at any time, be drawn by any depositor unless a prior notice of thirty, sixty, or ninety days shall have been given of the intention to draw money. Similar rules will be found printed in the pass-books of many, if not practically all, of the savings banks. But the stated rule is to be regarded as entirely precautionary, and has not been enforced by the savings banks except under the occasional emergencies of panics and extensive runs. An enforcement of a rule of this character may be regarded, to a certain extent, as equivalent to a temporary suspension of payments, and is therefore considered by many persons in the light of a reflection upon

the characters of the savings banks. These will be sufficient reasons for the presumption that savings banks will in general strive to attain the proud and honorable record of having passed uninjured through successive financial crises, always and promptly having paid every dollar which may rightfully have been demanded of them, without ever having suggested to their depositors the necessity of waiting until the money could be collected from outside sources.

It is difficult to determine upon the course which should be pursued by prudent and thoughtful persons concerning their accounts in savings banks in cases of great financial excitement and panic, when moneyed institutions are failing in quick succession, and when the common thought and desire of the majority is to withdraw accounts from the savings banks at the earliest possible opportunities. Upon such occasions it will be necessary to decide quickly ; nevertheless it will be necessary to put absolutely to one side the action of the majority, and thus guard effectually against the dangerous contagion of excitement.

It may be stated, as a general rule, that the headlong, rushing crowd goes wrong—does precisely what it should not do—and the part of wisdom will always be the using of one's own judgment rather than of the thoughtless determination of a mob. Prompt, but not headstrong consideration, must be had of all the facts and circumstances which shall be obtainable, and final conclusions must be followed to the letter. The element of uncertainty will always be present, from the fact that the individual depositors have no adequate means of ascertaining the exact financial conditions of their savings banks. In this respect the probabilities are only to be estimated from the general appearances and reputations of the savings banks, from their experiences and conducts upon former similar occasions, and from the business characters of the officers and managers. Perhaps the most natural answer to queries as to what shall be done with accounts in savings banks in emergencies such as are under consideration, will be that depositors will adopt the safe method with regard to their principals, though they may sacrifice parts

of their incomes, if they shall promptly withdraw their deposits from the savings banks, upon all such dangerous occasions. But this, evidently, is the conclusion of the multitudes which crowd the savings banks at the first rumors of danger, and, unless it may be assumed that wise and far-seeing persons will be able to read the omens of danger in advance, and thus forestall the difficulty, the adoption by them of the conclusion which has been mentioned will serve but to place them in the ranks of the multitudes. There are other considerations in the premises which may not well be neglected. Savings banks appear to be the especially protected children of the law. If, then, such institutions are deemed to be unsafe, what other institutions for the depositing of money can be considered less so? Inasmuch as there seems to be no satisfactory answer to this query which will serve the general purpose, the choice must lie between different institutions of the same kind, that is between savings banks. But, upon the presumption that by the application of the suggestions which have been made, the best accessible savings banks shall have been in every case selected, the choice will disappear altogether, and a quandary will remain as the result of an attempt to apply the principles of logic to the practice of financiering. In short, there is obviously no general rule which can be laid down for the guidance of depositors in savings banks under the circumstances which are under consideration. The obtaining of the best results will always require the employment of sound individual judgment and business sagacity. But the rule which appears to come nearest to the desirable general rule, and which, as far as can be ascertained, seems to be best sustained by the practical results, may be stated as follows: If the reputations of the particular savings banks shall be excellent, the selections having been made according to the directions which are contained in this chapter, and if depositors shall be able to observe no direct indications of weakness, their accounts should not be disturbed; if, on the contrary, there are unusual reasons for anticipating the failures of particular savings banks, accounts should be withdrawn with all possible

celerity, and placed in satisfactory savings banks or trust companies, while the depositors redouble their efforts to find substantial investments, which will be out of the reach of danger.





CHAPTER IV

TRUST COMPANIES

THE term Trust Companies, as used in the banking law, has been officially defined by the Legislature of the State of New York as "any domestic corporation formed for the purpose of taking, accepting, and executing such trusts as may be lawfully committed to it, and acting as trustee in the cases prescribed by law, and receiving deposits of moneys and other personal property, and issuing its obligations therefor, and of loaning money on real or personal securities."

The powers which have been especially conferred upon such companies by the New York banking law are as follows :

1. To act as the fiscal or transfer agent of any State, municipality, body politic, or corporation ; and in such capacity to receive and disburse money and transfer, register, and countersign certificates of stock, bonds, and other evidences of indebtedness.
2. To receive deposits of trust moneys, securities, and other personal property from any person or corporation, and to loan money on real or personal securities.
3. To lease, hold, purchase, and convey any and all real property necessary in the transaction of its business, or which the purposes of the corporation may require, or which it shall acquire in satisfaction or partial satisfaction of debts due the corporation under sales, judgments, or mortgages, or in settlement or partial settlement of debts due the corporation by any of its debtors.
4. To act as trustee under any mortgage or bond issued by any municipality, body politic, or corporation, and accept and execute any other municipal or corporate trust not inconsistent with the laws of the State.

5. To accept trusts from and execute trusts for married women, in respect to their separate property, and to be their agent in the management of such property, or to transact any business in relation thereto.

6. To act under the order or appointment of any court of record, as guardian, receiver, or trustee of the estate of any minor, the annual income of which shall not be less than one hundred dollars, and as depository of any moneys paid into court, whether for the benefit of any such minor or other person, corporation, or party.

7. To take, accept, and execute any and all such legal trusts, duties, and powers, in regard to the holding, management, and disposition of any estate, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipality, or other authority; and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

8. To take, accept, and execute any and all such trusts and powers of whatever nature or description as may be conferred upon or intrusted or committed to it by any person or persons or any body politic, corporation, or other authority, by grant, assignment, transfer, devise, bequest, or otherwise, or which may be intrusted or committed or transferred to it or vested in it by order of any court of record, or any surrogate, and to receive and take and hold any property or estate, real or personal, which may be the subject of any such trust.

9. To purchase, invest in, and sell stocks, bills of exchange, bonds and mortgages, and other securities; and when moneys, or securities for moneys, are borrowed or received on deposit, or for investment, the bonds or obligations of the company may be given therefor, but it shall have no right to issue bills to circulate as money.

10. To be appointed and to accept the appointment of executor of or trustee under the last will and testament, or administrator, with or without the will annexed, of the estate of any deceased person, and to be appointed and to act as the committee of the estates of lunatics, idiots, persons of unsound mind, and habitual drunkards.

11. To exercise the powers conferred on individual banks and bankers by section fifty-five of this act, subject to the restrictions contained in said section.¹

Each trust company organized under the general laws of this State, and having its principal place of business within a county containing

¹ Allowing them to receive interest at the rate of six per cent. per annum on loans and discounts upon notes, bills of exchange, and other evidences of debt.

less than six hundred thousand and over three hundred thousand inhabitants, as appears from the last State or Federal enumeration of its inhabitants, and having a capital of five hundred thousand dollars or upwards, may possess and exercise, in addition to the powers conferred upon it by the general banking laws of the State, the power, upon terms and conditions to be prescribed by its by-laws, to receive upon deposit for safe keeping bonds, mortgages, jewelry, plate, stocks, and valuable property of every kind for hire, and furnish information in relation thereto, and guaranty or insure the title to real estate to persons interested in such real estate or in mortgages thereon against loss by reason of defective title or other incumbrances upon said real estate.

When any such corporation is appointed executor, in any last will or testament, the court or officer authorized to grant letters testamentary in this State shall, upon the proper application, grant letters testamentary thereon to such corporation. When application is made to any court or officer having authority to grant letters of administration, with the will annexed, upon the estate of any deceased person, and there is no person entitled to such letters who is qualified, competent, willing, and able to accept such administration, such court or officer may, at the request of any party interested in the estate, grant such letters of administration, with the will annexed, to any such corporation. Any court or officer having authority to grant letters of guardianship of any infant, the annual income of whose estate exceeds one hundred dollars, may, upon the same application as is required by law for the appointment of a guardian of such infant, appoint any such corporation as guardian of the estate of such infant.

Any court having jurisdiction to appoint a trustee, guardian, receiver, or committee of the estate of a lunatic, idiot, or habitual drunkard, or to make any fiduciary appointment, may appoint any such corporation to be such trustee, guardian, receiver, or committee or to act in any fiduciary capacity.

Every court into which moneys may be paid by parties, or be brought by order or judgment, may, by order, direct the same to be deposited with any such corporation.

No bond or other security, except as hereinafter provided, shall be required of any such corporation for or in respect to any trust, nor when appointed executor, administrator, guardian, trustee, receiver, committee, or depository. All investments of money received by such corporation in either of such characters shall be at its sole risk, and for all losses of such money the capital stock, property, and effects of such corporation shall be absolutely liable, unless the investments are such as the courts recognize as proper when made by an individual acting as trustee, executor, administrator, guardian, receiver, committee, or

depository, or such as are permitted in and by the instrument or words creating or defining the trust. If dissolved by the legislature or court, or otherwise, the debts due from the corporation as such executor, administrator, guardian, trustee, committee, or depository, shall have the preference. The court or officer making such appointment may, upon proper application, require any corporation which shall have been so appointed to give such security as to the court or officer shall seem proper, or upon failure of such corporation to give security as required, to remove such corporation from, and to revoke such appointment. Such court or officer may make orders respecting such trusts and require the corporation to render all accounts which such court or officer might lawfully require if such executor, administrator, guardian, trustee, receiver, committee, or depository were a natural person.

These provisions, which are contained in the statutes of the State of New York, and which may be presumed to be as explicit as the laws of other States, have been given here in full, for the purpose of indicating the comprehensive character of the business which trust companies are allowed to conduct. In general, it may be said that they are permitted to act in any fiduciary capacity, in addition to the banking business which may be conducted by them.

In view of these facts—considering the extraordinary privileges which have been accorded the trust companies and the extraordinary effects which must follow their failures—unusual restrictions and precautions against failures may well be expected of the statutes of the various States. In general, investigations in this respect will result in somewhat of disappointment, for while, in the more conservative of the States, trust companies are well restricted by the letter of the law, and appear to be well guarded by the practical application of the law, it is also true that, in some of the States, the restrictions which have been placed on trust companies with the intention of making the probabilities of failure very remote, are, to say the least, not commensurable with the great responsibilities which these institutions are permitted to assume. The allowing of trust companies to loan money, be it either their own capital or the funds which are deposited with them, upon personal securities and evidences of debt,

such as promissory notes and bills of exchange, unless indeed very carefully limited, may properly be considered as a serious departure from the stringent regulations which should accompany such extensive corporate privileges.

Notwithstanding such considerations, however, it must be said that the large and high standing trust companies in many of the States are uniformly considered to be among the safest moneyed institutions in the land. Indeed, the fact that such great privileges in matters of a fiduciary nature have been given to trust companies, is advanced as evidence that the statutory restrictions are considered to be sufficient by the wise and experienced law-makers who have enacted them. For the purpose of depositing considerable or large sums of money, while awaiting regular investments, there are, it appears, no better or safer institutions than first-class trust companies; for the more important fiduciary purposes of executorship and guardianship they have generally the advantages of large capital and semi-publicity over the individuals who must, in the alternative, be depended upon for the execution of such trusts. The advisability of appointing trust companies as executors, trustees, and guardians will be more fully discussed in the chapters of this work which deal with the subjects of wills, executors, and guardians.

The following is a brief summary of the principal precautionary laws of the State of New York with regard to trust companies :

There must be at least thirteen incorporators, whose general fitness for the discharge of the duties appertaining to the business must be established to the satisfaction of the superintendent of the banking department. The incorporators are required to file with the county clerk of the county wherein the trust company is to be located, and with the superintendent of banks, sworn certificates stating the name, place of business, and amount of capital stock of the proposed corporation, and the names and addresses of all the incorporators, and also to give notice of the intention to form a trust company by advertisement in designated newspapers, copies of which must be sent to all trust companies already

existing in the city where the proposed trust company intends to conduct business.

The capital stock, fully paid up in cash, must be at least one hundred thousand dollars in cities of not more than twenty-five thousand inhabitants, not less than one hundred and fifty thousand dollars in cities of from twenty-five thousand to one hundred thousand inhabitants, at least two hundred thousand dollars in cities of from one hundred thousand to two hundred and fifty thousand inhabitants, and not less than five hundred thousand dollars in cities having populations of two hundred and fifty thousand or greater. Reports to the superintendent of banks are required to be made semi-annually in the months of January and July. The statements must be verified by an officer of the company, and must contain a statement of the trust company's condition and such other particulars as the superintendent of banks may prescribe.

The capitals of the trust companies must be invested in bonds and mortgages on unincumbered real estate in New York State, which must be worth at least double the amount loaned thereon, or in stocks or bonds of the United States, of the State of New York, or of any county or incorporated city in the State.

The funds which are deposited in trust companies may be invested in the same manner as the capitals, in the stocks or bonds of any State in the United States, or in such real or personal securities as the companies may deem proper. But the companies are not allowed to hold the stock of any private corporation to an amount in excess of ten per cent. of their capitals.

Interest at a rate not less than two per cent. must be paid on all sums not less than one hundred dollars received by trust companies as executors, administrators, guardians, trustees, receivers or committees appointed by any court or officer, or as depositaries of moneys paid into court; and stockholders are made liable, equally and ratably, for the debts of the companies. As a further security, trust companies are required to transfer to and deposit with the super-

intendent of banks United States Government or New York State bonds, or the authorized stocks or bonds of any city, county, town, village, or free school district in the State to the amount of not less than ten per cent. of their capital stocks, and, in the smaller cities, in amounts according to the population of the cities, of from twenty thousand dollars to one hundred thousand dollars.

The selection of a trust company should be governed by the considerations which have been given for the selection of banks and savings banks; the wisdom of the rule to choose large companies in the largest available cities will appear very plainly from the statutory regulations concerning capitals and securities to be deposited with the superintendent of banks which have been given. In addition to these precautions, there is another consideration which it will be well not to overlook when selecting trust companies to be used as depositaries for funds awaiting investment, and for other purposes of a fiduciary nature. As has been remarked, trust companies are authorized to conduct banking businesses, and in this connection to discount notes and other evidences of debt, which practice is considered by careful and conservative persons to be more venturesome and speculative than is consistent with the nature of the institutions. There are certain highly reputable trust companies which, agreeing with the conservative views which have been expressed in this work, conduct no regular banking businesses, but confine themselves strictly to the special kinds of business for which they were, properly speaking, organized, and in which their peculiar field of usefulness exists. In such institutions, the element of danger may be considered as reduced almost to a minimum, and, other things being equal, they should be preferred to trust companies which undertake to combine the regular business of trust companies with that of the banks.

The selection of a trust company having been judiciously accomplished, the general procedure between the depositor and the institution will be as follows: Upon introduction to one of the clerks, or introducing herself, the proposed depositor states briefly her business (for example, that she

wishes to deposit ten thousand dollars), and hands the check (not necessarily certified) or money to the clerk who is in attendance upon her. If the deposit consists of checks, bills, and specie, the depositor may fill out a deposit ticket similar to those used in banks, and if she wishes to deposit coupons, they should be placed in one of the small envelopes which are provided for this purpose, the envelope having a memorandum upon its back of the number, amounts, and total of the coupons. It may be stated, however, that such mixed deposits will with better propriety be made at the bank, and the depositor's single check may then be presented for deposit at the trust company. The depositor then writes her signature in the company's book, and receives a certificate of deposit to the effect that the trust company has received from her the amount of the deposit, upon which interest at a certain specified rate will be paid, and that the company will repay the sum of the deposit to the depositor or her assigns upon notice (usually five or ten days), reserving the right to reduce or discontinue the interest, or to pay off the principal on notice to the depositor by mail or otherwise. The provision requiring several days' notice before paying depositors is a precautionary measure, the purpose of which is to prevent a sudden run on the institution, and, as has been explained in the chapter on savings banks, is never enforced under ordinary circumstances. On the back of the certificate of deposit is printed a form of receipt with columns for the various amounts of principal and interest which may be drawn by the depositor from time to time. The certificate of deposit answers, in general, the purposes of the pass-book of the savings bank. It is the depositor's evidence of the deposit, and, although trust companies are very cautious with regard to the payment of money, it must be carefully secured against loss or theft, the number, date, etc., being recorded in the depositor's note-book or check-book, in order that immediate notice may be given the trust company in case of loss.

When drawing money from the trust company, the depositor presents her certificate to the clerk with the statement

that she wishes to draw so much money. If only a part of the amount on deposit shall be drawn by the depositor, she signs a receipt for the amount on the back of the certificate and also in the company's book, and receives again her certificate and the company's check for the amount drawn. When the entire amount on deposit and interest shall be drawn, the receipts are signed by the depositor and the certificate surrendered to the trust company. The checks which are given by trust companies to their depositors for money which has been drawn, are the companies' own checks drawn upon banks in which the companies keep their accounts. Such checks will generally pass for certified checks, for the reason that the trust companies are presumed to be at least as sound and responsible as the banks upon which their checks are drawn. But if, for special reasons, a trust company's check is required to be certified, the check must, as in ordinary cases, be taken to the bank where it is payable for the certification. For each deposit a separate certificate is ordinarily given by the trust company. It will facilitate matters, therefore, and at the same time will limit the number of certificates which are to be taken care of, if the depositor, instead of making several small deposits, shall make fewer deposits of larger amounts ; but, for this purpose, delays which will involve considerable losses of interest are, as a matter of course, not advisable.

The rates of interest which are paid by the trust companies, although varying somewhat at different times, are usually much lower than the rates which are obtainable from regular investments, and even considerably lower than the rates which are paid by savings banks. Probably from two to two and one half per cent. is not far from the average. But the interest which is paid by trust companies accrues for the whole periods of time during which the deposits are in the hands of the companies, and this fact must be taken into account if one chooses to compare the direct benefits in the form of interest paid respectively by savings banks and trust companies. By way of illustration, we may suppose that the sum of three thousand dollars is to

be deposited on the 1st day of March, to be drawn for a specific purpose on the 1st day of March following, that is, the money is to remain on deposit for just one year. If, now, this sum shall be placed in a trust company at two and one half per cent. interest, a full year's interest, or the sum of seventy-five dollars, will be received ; while if a savings bank shall be the depository, at the rate of four per cent. interest, only six months' interest, from July 1st to January 1st, or sixty dollars, will be obtained. If, on the other hand, the deposit is to be made on or shortly before an interest day at the savings bank, and to remain a full year, the depositor will receive a full year's interest at the rate of four per cent., or the sum of one hundred and twenty dollars, by making use of the savings bank.

It may be remarked, as has been already intimated, that small sums of money should not be deposited in trust companies, even if the companies shall be willing to receive them, since it will be evident from a perusal of the laws which have been given that these institutions have been organized for other and more important purposes than the receiving of insignificant accounts.





CHAPTER V

SAFE DEPOSIT COMPANIES

ALMOST all thrifty and well-to-do householders have in their possession certain articles which, although they may not be of great actual value, are valued very highly by the owners, because of the cherished family associations which are connected with them, or because of their importance as antiquities, which betoken ancestral respectability and good breeding. In the majority of households there are also legal and other papers of value — such as wills, deeds, bonds, mortgages, insurance policies, and the like — the loss of which will be certain to cause serious trouble and inconvenience, if not actual pecuniary damage. And lastly, there are, presumably, in the houses of all prosperous persons certain articles which, for the purposes of thieves, may be equivalent to money, or which at least, because of a common belief that they may be quickly turned into money, offer unusual temptations to thieves and robbers. Government bonds or other stocks and bonds, the pass-books of savings banks, the certificates of deposit from trust companies, valuable jewelry, and many other things of similar natures, are often the causes of much uneasiness, and also of actual danger to the households of the owners.

The numerous plans which have been from time to time suggested for the safe-keeping of valuables in the houses of the owners, seem to be alike open to reasonable and serious objection. Thus, the hidden strong box, which contained the heirlooms of former days, could be found and opened without difficulty by the skilful house-breaker if he considered

the undertaking worth his while. The promiscuous hiding of valuables in various nooks and corners about the houses of the owners has often proved to be successful only in one respect — some of the valuables have been effectually hidden for all time from the foolish and disorderly owners whose memories, in response to careless training, fail to retain accurate indices of the important nooks and corners. The imposing fire-proof and so-called burglar-proof safe often serves thieves and robbers as a hint to the effect that there are articles of value to be found in it, and tempts them to refute its claims of invincibility ; and the compact and well-made chest or valise, which may so easily be thrown out of the window in case of fire, while excellent for the reception of articles and papers which are not likely to be stolen, is useless for the keeping of negotiable valuables, because of the fact that it may be, with equal facility, thrown out of the window by a thief in the night time, when there is not the slightest danger of loss on account of fire.

For the safe storage and keeping of all such articles as have been mentioned, and for the avoidance of the difficulties which have been suggested as likely to result from ordinary methods of supposed safe-keeping, the reliable and well-appointed safe deposit companies which are to be found in the principal cities are almost indispensable.

The term " safe deposit company " has been defined by the banking law of the State of New York in the following words :

The term safe deposit company, where used in this chapter, means every domestic corporation formed for the purpose of taking and receiving upon deposit as bailee for safe-keeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, securities, and valuable papers of any kind, and other valuable personal property, and guaranteeing their safety upon such terms and for such compensation as may be agreed upon by the company and the respective bailors thereof, and to rent vaults and safes and other receptacles for the purpose of such safe-keeping and storage.

In some of the States no special statutory provisions have been made for the restriction and regulation of safe deposit

companies, and in such cases the legal liability of such companies in case of loss of deposited valuables will be no greater than that of other storage companies which receive and store valuable goods for compensation. It will be apparent from a perusal of the regulations which have been imposed upon safe deposit companies by the New York statutes, the principal points of which will be mentioned in this chapter, that the purpose of statutory regulations with regard to safe deposit companies is the obtaining of security which has not been otherwise provided for ; and therefore it may be assumed that the responsibilities of safe deposit companies (and companies organized for similar purposes) in the States which have made no statutory provisions with regard to them will depend entirely upon the dispositions and personal responsibilities of the proprietors. And this statement will be a sufficient reason for the cautious, if any, use of such companies. It may be, that, in the States the legislatures of which have not considered it worth while to provide for the safety of their citizens' valuables in this respect, there are no such institutions as safe deposits, and therefore no present necessity for statutory regulations. This is at least a charitable supposition, and if it be true, the citizens of such States will have the poor alternative of keeping their valuables as carefully as possible at their homes, and of depositing them in the vaults of the most substantial banks which can be found and which shall be willing to accept the charges.

In the State of New York safe deposit companies are regulated and restricted by statutes the principal provisions of which may be stated briefly as follows :

There must be at least five incorporators ; the paid-in capital stock must not exceed one million dollars, nor be less than one hundred thousand dollars, except in cities having populations of less than one hundred thousand, where it may be ten thousand dollars or over ; regular reports must be made to the superintendent of banks ; and the provisions with regard to securities which must be deposited with the superintendent of banks are the same as have been mentioned in the chapter on trust companies.

Safe deposit companies are forbidden to loan or advance money on any property which has been left with them for storage or safe-keeping, and the stockholders are made jointly and severally liable for all debts of the companies to the extent of the par values of their shares of stock.

The companies have the right, in case the rent of vaults or safes shall remain unpaid for a period of three years, and upon giving notice by mail to the persons hiring the vaults or safes, to open the vaults or safes in the presence of the officers of the company and a notary public, and to place the contents in the general vaults, in order that the safes or vaults may be rented to other parties.

A properly arranged safe deposit, or the premises in which the business of a safe deposit company is carried on, may be described generally in the following manner :

The building is a strong and substantial one, which is as nearly fire-proof and burglar-proof as it can be made, and protected at all times by numerous reliable guards and watchmen. The main portion of the building is divided into a large number of fire-proof compartments, of sizes varying from small boxes for the reception of papers to large vaults for the storage of valuables of considerable bulk, each with its special locks and keys, and all separated from the offices and waiting-rooms by several massive steel doors which are situated at various places along the passage ways. All the locks and bolts are of the most powerful and approved kind; guards are properly stationed at all gates or doors ; and various other precautions, such as pass-words, admission cards, requiring the giving of names, etc., are taken to prevent the entrance of such persons as may have no right to be upon the premises.

In addition to the precautions which have been mentioned in the preceding chapters for the careful selection of banks, savings banks, and trust companies, and which evidently will apply with equal force to the selection of safe deposit companies, an inspection of the premises should be made before deciding upon the particular safe deposit company with which to entrust the most valuable of one's articles of

property — articles which, at the same time, may be of the kind which will be most likely to be stolen.

There are considerable differences between the plans and arrangements of the various safe deposits, as well from the point of view of convenience and personal liking, as from that of actual strength and security; and the officers of safe deposit companies will, at reasonable times, cheerfully and courteously show their premises to intended patrons whose appearances shall be indicative of proper intentions.

The process of hiring safes or vaults of a safe deposit company is usually quite simple and direct. The person wishing to hire a safe, having made her choice among the safe deposit companies which are at her disposal, and having been introduced to the proper officers, selects her safe or vault; comes to an understanding with regard to the rental, times of payment, etc.; gives her name, address, and other required information or references to the officers; signs an agreement stating the term for which the safe is hired, the rental, times of payment, etc., if required; pays the amount of the first payment; and receives the keys, pass-words, and other instructions which may be necessary for obtaining admittance to the safes.

Because of the peculiar liability of safe deposit companies to the danger of robbery, it may be presumed that they will exercise extraordinary care, not only in the actual guarding of the valuable property which has been entrusted to them, but also in the selection of their patrons. Proper introductions at the safe deposit companies, when seeking to engage safes or vaults, will, therefore, be the means of saving considerable time and of otherwise facilitating the proceeding.

The pass-words and instructions for the purposes of admittance which are received at the safe deposits must be carefully and accurately remembered, for, at least until depositors shall become well known to the clerks and guards, any hesitation or forgetfulness on the part of depositors will tend to interfere with or prevent their free entrance to the safes.

It may also be remarked, although perhaps it is too evident to require demonstration, that the pass-words and instructions in question must be treated in all respects as confidential, and must not be revealed to any person under any circumstances.





CHAPTER VI

THE GENERAL PRINCIPLES OF INVESTMENT

THE principles and methods of business which, thus far, have been elucidated in this volume, have relation chiefly to institutions which are commonly used either as mediums for the convenient transaction of business (banks and safe deposit companies), or as depositories for money while awaiting more permanent dispositions—that is as temporary investments (savings banks and trust companies). We have now come to the consideration of the more lasting and regular sources of income which, because they are intended to endure indefinitely, we call permanent investments, and which, since they are the foundations upon which our fortunes will depend, can scarcely be treated with too much care and diligence.

The word “invest” primarily means *to clothe in or with, to cover with*, hence, to protect with ; it carries with it the ideas of security, comfort, and permanence, for our clothing protects us against the weather and affords us comfort during our entire lives. The words “invest” and “investment” are far too commonly used in the sense which properly belongs to the words “speculate” and “speculation,” and the general failure to observe and recognize the wide differences between the meanings of such words is perhaps broadly indicative of the loose and careless spirit of the age.

To “speculate” signifies *to spy out, to search for*, to explore the unknown, hence, to experiment. The suggestion of chance and risk which the investor seeks, first of all, to

avoid, is included in the meaning of the word. To play a game of chance for a valuable stake is to speculate. To say that a man *invested* his money in a game of chance is actually to make use of the gibberish of a fool, yet to many persons even the degree of misapplication of terms which is present in such an expression will appear only with difficulty. Modern tendencies have brought these divergent words into such close relationship that we continually hear of persons who have purchased railroad stocks or mining stocks, "not as speculations, but as investments," meaning probably that the stocks have been fully paid for, instead of having been purchased "on margin," and that, therefore, the purchasers may hold the stocks over possible periods of depression without almost certain loss. In reality, such an operation may be considered as a speculation, in which only that degree of caution which is common to all persons, except simpletons and gamblers, has been made use of.

The safest fundamental principle with regard to the management of property is to abstain entirely from speculation; or in other words, to confine all financial operations entirely to regular and well-known forms of investment. As will be explained later on, there are methods of speculation which approach so nearly to investments that they are perhaps permissible to persons who are possessed of extraordinary shrewdness and special ability. There are also speculations, varying all the way from those in which the chances are probably in favor of success, to such as will, almost without exception, result in heavy loss or ruin. It is, however, a fact beyond reasonable question that the proportion of speculating men who are successful in the long run is almost infinitesimal — perhaps, the world over, one in ten thousand — and scarcely a notable exception to the general and broad statement, that women always lose when they speculate, can be called to mind. Nevertheless, the vanity, conscious or unconscious, which is one of the universal characteristics of the human race, constantly induces people to believe themselves to be a little more sagacious than others, and in many cases to conclude, to their final sorrow and regret, that they,

with their superior abilities, may safely tread the dangerous paths of speculation.

And in this connection it may be beneficial to remark that the temptation to speculate, and to take risks in investments, unfortunately comes with almost irresistible force to the very persons who can least afford such risks of diminutions, or entire losses, of their properties — to those whose incomes are barely sufficient or insufficient for their wants.

Persons whose incomes, at the rate of five per cent., are ample for all proper and reasonable desires, unless possessed of an extraordinary folly, will not be easily persuaded to take great risks for the sake of increasing the already satisfactory incomes. Such persons, though in danger of direct robbery, and continually subject to swindling methods which depend for success upon the sympathy or carelessness one or the other of which wealthy persons are often presumed to possess, are generally free from the presentation of dishonest schemes which have for their supporting arguments the extraordinary profits which, it is claimed, they will surely produce.

But the thrifty poor, those deserving ones who are faithfully struggling to live within their little incomes and, by the exercise of the strictest economy and self-denial, to lay by small sums towards the competences which they have every right to expect, as long-deferred rewards for their years of toil and patience, and who are naturally eager in their searches for legitimate means of hastening their journeys towards independence — such, who should merit rather the encouragement and assistance of mankind, are often the easy victims of inexplicable rascals, whose alluring schemes are by far too numerous, and who themselves are treated far too gently when finally summoned by the law to receive their richly deserved punishments.

In support of these statements (though the truth of the statements requires no demonstration) may be mentioned a case (recently brought to the notice of the author) in which a certain so-called mortgage-loan company is stated to have collected from the farmers of a proverbially thrifty and frugal

community over a million of dollars, a large part of which has been lost through schemes which were warranted by the promoters to pay large profits with absolute safety to the principal sums involved.

For the practical application of the rule to avoid speculation, and to confine financial transactions strictly to investments, satisfactory methods of discriminating between investments and speculations will be necessary, for it must be admitted that exact distinctions between them will not be, always and to all persons, without difficulties.

From the definitions which have been given, it may be inferred that the practical distinction between investments and speculations will involve the element of safety. Such dispositions of money as are universally admitted to be without risk, having long-established and well-known kinds of securities (such as mortgages for example), are investments, and all dispositions of money in manners which are untried, experimental, or known to be dangerous, are speculations.

Another, and perhaps a more definite rule of distinction, is this : If money is placed for the purpose of obtaining an increase in the principal, the transaction is a speculation; if money is placed for the purposes of securing the principal and obtaining a regular income, the transaction is an investment. This rule of distinction will give rise to the suggestions that all forms of speculation are not necessarily dangerous, and that all forms of investment are not necessarily free from danger. And as illustrations it may be said that the purchase of first-class improved real estate, for the purpose of obtaining a profit by the enhancement of values, will be a speculation which may be without danger, while the purchase of dividend-paying stocks, for the purpose of obtaining an income, will be an investment which will often prove to be dangerous.

The accuracy of such statements cannot be doubted ; but, instead of permitting cautious owners of property to depart from the general rule to avoid speculations, they may, for purposes of a greater degree of safety, serve to confine the financial transactions of property owners, not only to

investments, but to certain kinds of investments, the peculiar advantages of which will, in the course of the following pages, be made plain.

For the purposes of discussing the general principles of investment, it will be necessary to divide investments into two general classes: first, the class in which investors become the absolute owners of the securities, as in purchases of real estate, Government bonds, etc.—which may be called *purchase investments*: and, second, the class in which investors advance money upon the promises of borrowers to return the money with interest, and upon the securities which the borrowers pledge or bind in support of their promises, as in loans upon mortgages—which may be termed *loan investments*.

Of the two general classes of investments, the former, at first glance, appears to be the more advantageous; for, if securities shall not be sufficient when they are actually owned and controlled by investors, it may be difficult to suggest a manner in which the securities may be made sufficient. But, on the other hand, loan investments, properly made, will enjoy an excess of security, which will not often be present in purchase investments. Thus, if an investor shall loan the sum of ten thousand dollars upon bond and mortgage, the value of the mortgaged premises may be twenty thousand dollars; but if real estate, which is worth ten thousand dollars shall be purchased, it may be presumed that the purchase price will amount, at least very nearly, to ten thousand dollars.

The determination of the actual relative merits of the two general classes of investments must, however, be reserved for later chapters of this work, and it will be sufficient for the present to conclude that, with the same degree of good judgment and caution, the classes which are in question will be equally safe and advantageous.

The two general classes of investments will, at certain points of the discussion upon which it is now necessary to enter, require somewhat different methods of treatment. They may, however, be more conveniently considered together, by the aid of proper suggestions and explanations,

by way of distinction, whenever such appear to be necessary.

The first important consideration concerning investments is that they shall be, as nearly as possible, absolutely safe ; and the second is that they shall return fair and regular incomes. These two considerations will be found to comprehend the entire discussion of the general subject of investments.

Taking up the discussion of the considerations in the order in which they have been mentioned, it must be remarked that there are two general requisites for the safety of investments : first, there must be real and ample securities for the money which is invested ; and, second, the securities must be within the control of the investors.

In order that securities may be real and ample they must have actual and permanent values amounting to considerably more than the amounts which have been invested ; for, at best, there are always possibilities which will require margins on the side of caution, and an indefinite or unknown security, or one which may be subject to serious fluctuations, and may even disappear entirely at some future time, amounts practically to no security at all.

The difference between the actual and permanent values of securities and the amounts of the corresponding investments, or,—since it must be assumed that, under no possible circumstances, will the difference be upon the wrong side,—the excesses of the actual and permanent values of securities over the amounts of the corresponding investments may be termed the *margins of safety*.

In this place will appear the principal necessity for the distinction which has been made between purchase investments and loan investments. Indeed, difficulties in the way of applying the rules which have been given the purchase investments seem here to present themselves. Thus, the rule which requires the margin of safety evidently cannot be satisfied with respect to purchase investments unless either the securities shall be purchased at prices which are considerably less than their actual and permanent values, or the necessary margin of safety shall be, in some other manner,

supplied. So, also, the application of this rule to purchase investments appears to conflict with the rule which, for the greatest safety, requires the avoidance of speculations; for, if purchase investments cannot safely be made without obtaining direct increases to the principals of the investments, it may be difficult to perceive wherein they differ from speculations.

These objections will have the practical effect of removing from the list of permissible investments many kinds of purchase investments, and that such a result is neither unintentional nor deplorable will be sufficiently demonstrated in the succeeding chapters of this work. Nevertheless there are certain kinds of purchase investments with respect to which the overcoming of the objections which are now under consideration will not be difficult. Such purchase investments (which are to be distinguished from speculations because, although they may, and assuredly ought to, furnish increases to the principals, the chief purpose is the obtaining from them of regular incomes) will provide the necessary margins of safety by means of the excesses of actual values over the purchase prices, and also by the enhancements of values which must not fail to appear.

It may also be remarked that, since in purchase investments the securities are, in the greatest possible degree, within the control of the investors, the necessity for large margins of safety will be much less than in cases of loan investments.

The principle of the margin of safety will be better understood after a study of the succeeding chapters upon the subjects of mortgages and real estate.

The importance of correct valuations of the securities upon which investments are to be made can scarcely be overestimated, seeing that the securities are to be regarded as the foundations upon which the safety of investments must rest. And the greater care must be devoted to the work of determining the valuations, for the reason that, obviously, no general rules for the guidance of investors in this respect can be devised. The skill and judgment of investors will here

meet with the greatest difficulties, which, however, need not dismay investors, since they have been overcome in every successful investment.

The method of investigation by means of which accurate valuations of securities are to be obtained may be described in the following manner :

The average actual values (that is the obtainable cash prices) which the particular or similar securities have maintained, for the greatest possible number of past years, and the present actual values must be ascertained, and the sagacity and judgment of investors must then be depended upon for correct conclusions as to the effects which future events will have upon the values. It will be observed that this method includes two very different processes, the one (the ascertaining of past and present values) being often comparatively simple and definite, while the other (the forming of correct conclusions with regard to future values) is, in many cases, complex and difficult. According as these two processes can or cannot be brought into operation, and according as the former, or definite process, will or will not predominate, in some cases, the application of the method which has been given will directly accomplish the purposes in view; in other cases it will be but partially successful, and in still others it will altogether fail.

If the proposed security for an investment shall be a plot of land, the average price for which the land or similar land in the vicinity has been sold during past years, and the present value of the land, will not be difficult to ascertain, and the difficulties in the way of conclusions concerning the future values will be reduced to minima ; indeed, to such an extent will the definite process predominate that the values which will be furnished by it may often be safely regarded as the actual value of the land. If the proposed security for an investment shall be the stocks of a gas company or of a street railway, the previous actual values may be difficult to ascertain, and cannot be safely depended upon to fix the permanent actual values, because new conditions (such as increases or decreases in the population which supports the

enterprise, adverse legislation, or injurious competition), which will seriously interfere with the calculation may and probably will arise. If the stock of a corporation, which has been recently organized for the manufacture of some special novelty, shall be the security which is offered, it is evident that the actual value of the security will depend alone upon the future success of the novelty which is to be manufactured, and the method which is in question will be impossible of application.

Notwithstanding exceptions such as have been suggested, for the purposes of general results, the method which is under consideration will prove to be satisfactory and sufficient. Indeed, even in exceptional cases, the method will not altogether fail, for though the desired valuations cannot by its use be determined, the general character of the securities as uncertain and unsafe will be fully established.

The necessary magnitude of the margin of safety will depend to a considerable extent upon the character of the securities. For reasons which have been already suggested, the present margins of safety in purchase investments, which are in other respects entirely satisfactory, may, indeed, be small; while in loan investments generally it may be said that the larger the margins of safety shall be the better will be the characters of the investments. If the securities for loan investments shall be in every respect first class, margins of safety of from twenty-five to forty per cent. may be accepted; if the securities shall be somewhat uncertain in character, much greater margins must be required; and if the securities shall be of dangerous kinds, the margins of safety must be infinitely large—that is, the investments must not be made at all.

A loan which is secured by a mortgage on good real estate in the city of New York will be generally considered to be perfectly safe if it shall amount to sixty or even a greater percentage of the ordinary value of the real estate; a loan upon the stock of a manufacturing company, or of a railroad company, will require a very much larger margin of safety, if such a loan shall be considered at all; and a loan upon a

chattel security, such as horses or live stock, which may be lost through death or removal, will not be for a moment entertained by a careful person.

It may seem to be unnecessary to mention, among the essential qualifications of safe and ample securities, the necessity that the borrowers' ownerships of, or titles to, the securities shall be perfect, inasmuch as inquiries in this respect ought evidently to be the first to present themselves. But cases are by no means infrequent in which the money of investors has been lost by the careless depending upon securities to which the borrowers have had insufficient titles or even no titles at all. Unscrupulous persons, presuming upon the very audacity of their schemes, have sometimes been successful in borrowing money, not only upon personal property which actually belonged to others, but in some cases upon real estate in which they had no interest whatever. Placing reliance, in any important respect, upon the statements of borrowers is not the exercising of proper or ordinary prudence. Much more dangerous is the practice of presuming, for the sake of convenience, that borrowers are so circumstanced that they will not dare actually to defraud investors. If it shall not be worth one's while to investigate the borrower's ownership of the security, it will certainly not be worth one's while to make the proposed investment.

In cases of loaning money upon real estate securities, investigations concerning the borrowers' titles are to a certain extent simplified by the fact that the ownerships and conditions of the securities with regard to liens and encumbrances are matters of record, and can therefore be ascertained with almost absolute certainty; and the same may be said of certain kinds of stocks and bonds which are properly registered. But the difficulties in the way of investigations concerning the ownership of personal property in general are alone sufficient to induce careful investors to dispense with all loans which depend upon such property for securities.

With regard to the titles to securities, no less careful investigations should be made in cases of purchase investments. On the contrary, if any distinction is to be made, it must be

that, in purchase investments, titles should be even more thoroughly examined than in loan investments, since of the two the former are likely to be the more permanent.

As will be seen hereafter, the laws of a country or State may, and in many cases do, have a vital effect upon the safety of investments, because evidently laws may be entirely adequate for, inadequate for, or even obstructive to, the remedies which are necessary for the protection of investors. The regular precautions, which are necessary for the avoidance of such difficulties, will require investors to have the laws of the different States in which they shall propose to make investments carefully examined, and such proceedings cannot fail to be advantageous even though they may involve considerable expenditures. A simpler way out of the difficulty, however, and at the same time a practice which will probably produce more satisfactory results in the majority of cases, is that of confining investments to the particular States in which investors shall reside, with the general statutory principles of which, affecting investments, they should be familiar. If an intermediate course shall be desired, investments may be restricted to the older and well-settled States, in which investors shall have reasons to believe that they will find impartial and ample protection in the laws.

The precautionous principle, which must lead investors to distrust even the laws to which they must look for protection, may be still further developed by considering the general tendencies of the laws in the States where investments are to be made, and the causes of such tendencies, with a view to the possible anticipation of adverse legislation. Thus, for the sake of erring, if at all, on the side of caution, it may be presumed that in States the people of which have been unreasonably enthusiastic in the direction of so-called anti-monopoly, future legislation will tend in general to be unfavorable to investments from the investors' point of view. For similar reasons certain States, the laws of which discriminate, or have discriminated, to a considerable extent and very unwisely against non-residents, should be approached for purposes of investment with much hesitation ;

and States whose unfortunate and dishonest inhabitants have, after obtaining large investments of outside capital, proposed, and, in some cases, enacted laws which are intended to benefit the resident debtors to the wrongful injury of the investors, should, without exception, be avoided, and left to work out unaided their own salvation.

It is self-evident that if the securities for investments shall be entirely beyond the control of the investors there may as well be no securities at all, for they are worthless—securities only in name. The second requisite for the safety of investments (that securities shall be within the control of investors), in its absolute sense therefore needs no demonstration. But there are distinctions and amplifications, in the matters of securities and their control, which must be noted.

In the first place, then, the real securities for investments must not be confounded with the mere evidences of the securities, the word "security" being used in the original and proper sense (that which secures, or makes safe), and not in a derived sense of an evidence of debt, such as a bond. If an investor shall purchase a house, the house itself will be the real security for the money invested, and the deed which the investor receives from the vendor will be merely the evidence of the security. If an investor shall loan money on land, the land will be the security, and the bond and mortgage will be the evidences of the debt and of the security. If money shall be invested in the stock of a bank, the capital and surplus of the bank will be the real security and the certificates of stock merely the evidences. In every case, it is the actual security (that property to which eventually investors must look to make good their investments) over which investors must be able, in case of necessity, to exercise control.

With regard to the extent or quantity of control which is necessary for the safety of investments, it is obvious that, other things being equal, the more perfect the investors' control of the security becomes, the safer will become the investments; and the control will be perfect only when investors shall own, or, without fail, may own, absolutely and alone,

the entire securities. If an investor shall singly purchase and own free and clear real estate, other conditions having been properly fulfilled, the transaction will be a perfect investment; for the real security will be absolutely within the control of the investor. If an investor shall loan money upon real estate which shall properly satisfy the requirements in other respects, the transaction will be a perfect investment, because the entire security—the real estate—may without fail be reduced to the possession, ownership and perfect control of the investor if the necessity for such action shall at any time arise. If an investor shall purchase the stock of the most profitable and best-managed railway in the land, the transaction will not be a perfect investment, because the real security (which in this case will be composed of the paid-in capital, rolling stock, undivided profits, and other marketable property belonging to the railroad company) will be beyond the reach and control of the single stockholder, and the investor will be forced to depend upon a fictitious and uncertain security—the market value of the stock. The requisite that investors shall control their securities is, therefore, in the broadest significance, to be fulfilled, when such control shall apply to real securities, and when, avoiding all partnerships and joint transactions, investors shall make their investments on their own responsibilities and for themselves alone.

Under the title of the general principles of investment, there remains now to be discussed the consideration that investments shall return fair and regular incomes. At first thought, such a discussion may seem to be of little importance, since investments are uniformly made for the very purpose of obtaining therefrom regular incomes. The importance of a thorough understanding of this consideration will, however, appear without difficulty as the discussion proceeds.

Since the incomes which are to be derived from investments are of such vital importance, it is essential that they shall be sure, or as nearly so as the caution and judgment of the investors can make them; otherwise expressed, incomes from

investments must be free from unusual contingencies and possibilities of fluctuation. An excellent rule for the attainment of this essential is that investments shall be made upon securities which are of such a character as to be the last of all kinds of property to feel the effects of depressing circumstances. This condition will be best fulfilled when the securities shall be such as are most necessary to those who shall directly pay the incomes. Thus a mortgagor will, if necessary, refuse to pay other debts in order to pay the interest upon a mortgage which is a lien upon his property, because, otherwise, he may lose the house which shelters him and his family; a tenant of desirable premises will make the greatest effort to pay his rent, lest he be dispossessed, and the necessary premises taken from him; but the mortgagor of property which is a mere luxury, will, in case of financial difficulty, first of all, refuse to pay the interest upon the mortgage, and let the luxury go; and the first act of economy of a failing corporation will be the refusal to pay dividends on its stock, in order that necessary expenses may be paid.

The principles which have been explained in the earlier pages of this chapter affect directly the certainty of incomes from investments; for it is plain, since the principal debts and the interest are merely separate parts of the entire obligations of the borrowers, that any rule of conduct which shall secure the principals will also secure the incomes, and the same sound judgment which shall make the purchased or mortgaged securities good and sufficient will also make sure fair incomes from the investments.

In an especial manner the margin of safety will be found to affect the certainty of incomes. If in loan investments the margins of safety shall be large, the borrowers will evidently make all reasonable efforts to pay their interest, in order that their equivalent equities in the securities shall not be lost. So, also, if, in purchase investments, there shall be ample margins of safety, small incomes, as compared with the actual values of the securities, will prove to be satisfactory, and the incomes will therefore be the more easily obtainable.

In stating the consideration, which is at present in question, the words "fair" and "regular" have been used as qualifying the incomes which ought to be received from good investments. These qualifications are founded upon practical and almost invariable reasons, and cannot be neglected without risks of serious and injurious results.

The necessity that incomes shall be regular has been sufficiently explained in an earlier chapter of this work, and the quality of regularity will be sufficiently secured by proper agreements with those who are to pay the incomes, and by the application of the principles which have been discussed in the earlier portions of the present chapter.

Unthinking persons will doubtless fail to observe good reasons why efforts shall not be made to obtain the greatest possible amounts of income from the smallest possible amounts of principal; but prudence and reflection will suggest to intelligent minds the fact that money, like all other commodities, must have a general or average value in the market, and that the obtaining of values which shall be greater than the average must be attended by special circumstances concerning which it will be profitable to inquire.

It may be accepted as a general rule of very wide application that the relative amounts or percentages of incomes from investments will vary directly as the risks which shall be incurred; that is, greater relative incomes will involve greater risks, and smaller relative incomes will involve less risks, or will secure greater safety. If a person shall desire to borrow upon real estate so great an amount of money that the margin of safety will be dangerously small, the borrower will be compelled to pay large rates of interest, because the risks will be so great that none but the avaricious will consider the investment. A tenant who shall conduct a hazardous kind of business must pay high rent for his premises, because only greedy landlords will accept such risks of having their property destroyed. So, fraudulent schemes of speculation or of investment are almost always advanced and recommended upon the ground that the profits will be

exceptionally large. It may here be remarked that such schemes are often successfully carried out by showing, apparently conclusively, that large profits have already been paid to previous investors. And this may be a matter of little difficulty ; for, if investors shall have been sufficiently foolish to advance money without proper security to men who intend never to repay the principals, the borrowers may very easily pay rates of interest which are exceptionally high for short periods of time, and thereafter default indefinitely in the payment of both interest and principals, thus furnishing themselves with handsome profits, and the investors with opportunities, it is to be hoped, for earnest and prolonged reflection.

But it will be suggested that there may exist, at certain times, exceptional circumstances which will enable investors, with perfect safety, to obtain, at least for short periods, relative incomes which shall be greater than the accepted averages. Undoubtedly there may be such opportunities ; but the suggestion tends toward the encouragement of a greed for temporary advantage which is, indeed, much to be deplored. The true theory of investment looks always to the qualities of regularity and permanence, and wisely refuses to consider temporary advantages, which are generally to be obtained only at the cost of corresponding future disadvantages. The mortgagor, who may be compelled by circumstances to pay temporarily a high rate of interest, will seize with avidity the first opportunity to repay the loan, by obtaining the necessary money from other sources, at a lower rate of interest, and the greedy investor may then be forced to accept trust company rates while searching for new investments. The tenant, whose landlord shall take advantage of special circumstances to demand an unfair rent, will gladly move when the opportunity shall be presented, and with no regrets that, by so doing, he will cause for the landlord the loss and expense which will follow the vacating of the premises. Thus it is that, while exercising all reasonable shrewdness in the search for investments which will pay well, investors should see to it that their incomes shall not

be materially greater than the safe, average incomes which are derived from similar investments.

The inclination towards avarice which has been manifested by a large proportion of those who are able to loan money to their less fortunate neighbors, and the forced willingness on the parts of borrowers to agree to almost any rates of interest for the sake of obtaining necessary money without delay, have been the causes of the enactment of laws, in the different States of our country, and in other countries, for the regulation of the rates of interest which may be received for the use of money.

The term *usury* originally signified the taking of money for the use of other money (or interest) and was considered to be at least a dishonorable practice ; it is now defined as the receiving of a higher rate of interest than that which is allowed by the laws. The general effect of the usury laws is to make usury illegal, in some of the States criminal, involving a forfeiture of principal or interest or both, and when criminal, a punishment by fine and imprisonment.

The usury laws of the different States vary considerably with respect to the rates of interest which are prescribed by them (that is the presumed rates when none have been agreed upon), the legal rates of interest varying all the way from five to ten per cent. per annum, and the specified rates which are allowed to be contracted for varying from six per cent. to twelve per cent. per annum.

During recent years there has been a tendency in many of the States to lessen the so-called severity of the usury laws, by allowing contracting parties to agree, either in writing or otherwise, to pay and receive any rates of interest, however high. Such laws have already been enacted in several of the States.

An inquiry into the reasons for, and the causes of, legislation of this kind seems to result in conclusions which are against the security and advantage of loan investments in these States. The laws which are under consideration cannot be presumed to rest alone upon the broad grounds that our money is our own private property, and that, therefore,

we ought to have the right to obtain whatever rates of interest are possible for the use of it ; for such contentions have long ago been set aside, though admitted to be technically correct, by the necessities and benefits of public policy. Moreover, it is difficult to believe that a majority of the people will agree to such legislation upon grounds which, to many, will appear to be so abstract. Neither can we believe that the influence of greedy money-lenders in these particular States has been sufficient to overcome the will of the people. The conclusions must, therefore, be that States the legislatures of which have thought it wise to depart so widely from the old and well-settled rules for the prevention of usury have found it necessary to offer unusual inducements for the loaning of money within their borders ; or, expressed in different fashion, that there are reasons (such as a generally bad character of securities, unfair or inadequate laws, or the fear of adverse legislation) which tend to prevent the loaning of money, and which the law-makers seek (by means of statutes which may have, upon prudent investors, precisely contrary effects) to overcome.

Apparently little risk of mistake will be incurred if it shall be predicted that legislation of this kind will generally fail to realize its purpose, and that it will be of little service except to delineate, for the benefit of far-seeing capitalists, certain sections of our country within which, for the purposes of loaning money, they will not go.

In conformity, then, with the principles which have been elucidated, all States in which there shall be practically no usury laws, or in which the ordinary rates of interest shall be exceptionally high, should be regarded, at least until the contrary is conclusively proved, as unfit places for the making of loan investments.

Recent years have brought into notice many complicated propositions, some honest and some fraudulent, for the safe and advantageous investment of capital. Such propositions are the natural results of two conditions which are consequent upon the rapidly increasing population of our country, namely : the increasing difficulty of obtaining safe

investments with satisfactory returns, which condition induces investors to entertain methods which otherwise would receive no notice at all ; and the steadily increasing difficulty of earning sufficient salaries or business profits for the expensive necessities of the age, which condition constantly incites the inventive genius of the people to the discovery of new schemes, or modifications of old schemes, for the easy acquisition of money. By far the safest method of dealing with all propositions which require, for the demonstration of their feasibility, complicated mathematical calculations, or abstruse logical reasoning, will be the prompt refusal to consider them, without even so much as attempts to understand them. They are to be regarded, one and all, as schemes which may work out splendidly on paper, but which will seldom, if ever, prove to be successful in actual practice. They are almost invariably evolved, either by skilful rogues for the purpose of perplexing innocent investors, or by visionary ne'er-dowells, who, after having striven in vain to make their own fortunes, desire to apply the genius of failure, which they so largely possess, to the imagined benefit of their friends and of humanity at large. And, further, it may be remarked, that there is danger in the simple contemplation of such propositions. For, to many persons, there is a fascination in logical conclusions and mathematical proofs, which, too much indulged, may lead to the acceptance of ruinous so-called investments. The theory of a safe investment must be simple ; its initial considerations need be only such as these : so much money is to be placed upon such security, and the returns will be so much per year. Investigation, judgment, and simple calculation will often be required ; but the education of one learned in higher mathematics, or in other sciences, or the extraordinary skill of an expert accountant, never.

In all investments where there shall be agreements by which considerable sums of money are to be paid or repaid to investors at future times (therefore, particularly in loan investments) the character or quality of the money which is to be paid will be a most important consideration.

There are material differences between the moneys of different nations, and there may be equally important differences between the values of money, in the same country, at different times and under different conditions.

A large part of the money of the world is in the shape of paper bills or notes, which are, in effect, printed promises of the particular governments which issue them to redeem them, on demand, in some standard coin which ought to pass universally as actual money. The recognized standard, or basis of money, the civilized world over, is the metal gold, coins of this metal and of the same weight and fineness having more nearly the same actual value or purchasing power, everywhere and at all times, than coins of any other metal.

The actual value of a nation's paper money will, therefore, depend upon two conditions: first, the nation must expressly or impliedly promise to redeem its paper money in gold; and, second, the good faith of the nation must be such that its promises will certainly be made good. If a nation, having the best possible credit, shall promise to redeem its paper money in some inferior or fluctuating metal, the money will evidently not be of the best kind, because the standard of redemption will be low or uncertain as compared with the accepted gold standard, to which it must finally be reduced. If a nation, having no credit, shall promise to redeem its paper money in gold, the money will be of little actual value, because the nation's promise will probably not be made good. And, finally, if a nation, having perfect credit, shall maintain at all times a gold standard of redemption for its paper money, the money will be of the greatest possible value.

In a similar manner, it may be demonstrated that the quality of the money in the same country may vary, according to the standards of redemption which may be in use at different times, and according to the credit of the nation, as affected by prosperity and peace on the one hand, and by disaster and war on the other.

The money of our country has been (except when affected by wars and financial disorders) and now is of the best possible kind—equal in relative purchasing power to any money

in the world ; but that such honorable and judicious conditions will always be maintained is, unfortunately, by no means certain. It is, therefore, of great importance to investors that the money with which debtors shall repay loans shall be equal in quality to the money which has been loaned ; else investors will lose the differences. Thus, if the amount of ten thousand dollars, in perfect money, shall be loaned, and at some future time the loan shall be repaid in depreciated dollars, which are worth only half as much as the perfect dollars, the investor evidently will lose one half of the money which has been loaned, or five thousand dollars.

The precautions which will be necessary to guard against such possibilities should be in the form of legal agreements, between investors and borrowers, to the effect that loans shall be repaid in certain designated kinds of money, in all respects the full equivalents of the money which has been loaned. And, since the money of the United States at the present time is equivalent to gold coin, agreements to repay loans may read : " In gold coin of the United States of America, of the present weight and fineness, or its just and full equivalent."

Before bringing to a conclusion the discussion of the subjects which form the title of this chapter, it will not be entirely without benefit to remark that the real, and at the same time the more humane, objects of loan-investments are to receive fair incomes from the transactions, and at their terminations to receive back again the exact amounts which have been invested. Contemplated in the light of covetousness, a chief object of investments appears to be the seizing of the securities at the first propitious opportunities, and the consequent enriching of investors to the injury and ruin of others.

There is a numerous class of so-called investors, whose practice is to loan money upon bond and mortgage for the purpose of " cornering " mortgagors, at the slightest defaults, and by foreclosures, at times when bidders for the mortgaged premises will be few, possessing themselves of the

premises at prices which are far below actual values, thereby depriving the mortgagors of their entire equities.

Another equally disreputable practice, among cruel and avaricious lenders of money, is the loaning of money upon chattels, such as household furniture, or store fixtures, receiving for the loans bonuses which are often, in fact, usurious, and foreclosing their liens at the first technical defaults in the terms of the agreements.

Still another, and a still more heartless proceeding — an evil which has occupied the attention of well-disposed legislators and judges, though apparently in vain — is that of selling to working people implements of trade, such as sewing-machines, etc., to be paid for by instalments, with agreements, in the form of leases, such that the implements may be taken away from the purchasers upon the slightest failures or delays in paying the instalments. After considerable portions of the purchase prices have been paid, the vendors, taking advantage of slight defaults, often take from poor and needy purchasers both the sums of money which they have already paid and the implements with which they had hoped to better their miserable circumstances.

And in like manner the pawn-shops, which are considered to be necessary for the welfare of large communities, and which, in consideration of the relief which they are supposed to afford, the risks which they are supposed to assume, and the restrictions which are supposed to govern them, are allowed by the law to receive rates of interest which otherwise would be usurious, are thought by many persons to be legalized evils which ought to be done away with.

It is not to be denied that such hard and grasping methods, when employed by shrewd, greedy, and generally unprincipled persons, will often return large profits for considerable periods of time. Nor is it to be denied that for such persons there will come times when reputations in exact accordance with their despicable characters will be established. Humanity will proclaim them heartless. They will be called *birds of prey, sharks, ghouls*. Everywhere they will be shunned and avoided, like things of terror, like pestilences.

Their occupations will be gone. And if, perchance, in dire necessity, they shall plead for generous treatment at the hands of others, how can they escape that relentless answer which pervades not only justice but nature—"With what measure ye mete, it shall be measured to you again!"

Surely no price will be able to compensate experiences like these. Fortunate indeed is it that such experiences need fall to the lot of no one—that a generous heart may, by judicious management, be easily reconciled to a life of regular business methods—that a kindly nature is by no means necessarily a commercial failure. While carefully guarding our own rights and interests we should, whenever possible without injuries to ourselves, be generous and lenient towards those who are under obligations to us, undertaking, to the best of our abilities, to fulfil to the letter the immortal simile, so beautiful because divine: "Be ye therefore wise as serpents, and harmless as doves."





CHAPTER VII

BONDS AND STOCKS

A THEORETICALLY perfect government, could such exist, would, in its simplest economic conception, be so conducted that its regular income, from taxes and other sources, would be always and exactly sufficient to pay all its necessary expenditures ; or, in other words, a government would be in a financially perfect condition if it could be, at all times, entirely free from debt, and without unnecessary surplus in its treasury. If such happy conditions were possible of realization, governmental functions would indeed be reduced to the ideal, and the often importunate burdens of citizenship would be all but obliterated. But nations and other governments are in fact far removed from the ideal, in this as in other important respects.

Nations are, unfortunately, subject at all times to bad and injudicious legislation with regard to direct taxation, imposts, tariffs, internal revenues, and general dealings with other nations. These agencies, together with the often incompetent or dishonest characters of public officials, are unceasingly at work, increasing the balances upon the wrong sides of the world's accounts of receipts and expenditures. In addition to such considerations, others, by far more formidable, are the wars to which nations must be liable, and the preparations for war, or precautions against war, which are necessary to the very existence of nations.

To provide regularly, by direct taxation, for such contingencies would evidently be the means of bringing financial ruin to almost every citizen and to almost every nation. The

nations of the earth are therefore compelled, at certain times, to borrow immense sums of money in order to meet these extraordinary expenses.

In a similar manner, though on much smaller scales, and indeed with much less of good reason, states, cities, counties, and even villages, throughout the civilized world, are continually compelled to run into debt, in order to supply the numerous public improvements and conveniences which the people demand, and for which the ordinary taxes and receipts are not at all times adequate.

It is a statement not to be doubted that, in a majority of the nations, states, and cities, and even perhaps counties and villages of the civilized world, serious indebtednesses not only continually exist but continually increase. An attempt to compute the actual aggregate of the world's public indebtedness would be a task practically of impossible proportions; and the amount of such indebtedness, could it be properly expressed, would not fail to startle the intelligent citizen, by reason of its stupendous magnitude and the mighty consequences which eventually must be involved. It has been estimated that the combined money of the entire world would go but a little way towards the payment of the world's public indebtedness.

In a work of this description, there appears to be neither necessity nor propriety for an attempt to discuss, at any length, the probable outcome of such a state of affairs; but the state of affairs itself is, at least, apposite for remark, because of the effect which it must at some time have upon the values of the public securities (so-called) which are about to be considered.

For the purpose of securing, or of appearing to secure, the repayment of the loans which are made necessary by the expenses which have been suggested, nations, states, cities, counties, and villages commonly issue written or printed evidences of indebtedness, called bonds. These bonds are solemn obligations, by which the borrowing governments, by the signatures and attestations of their properly qualified officers, promise to pay the amounts stated in the bonds at

certain specified times, and with certain specified rates of interest. Attached to bonds of this description are commonly series of coupons, corresponding to the regular intended payments of interest. When certain interests are due and payable, the corresponding coupons are torn from the bonds, by the bondholders, and deposited in the banks for collection, or are otherwise collected.

By reference to the general principles of investment which have been expounded in the preceding chapter, it will be apparent without difficulty that the conditions which are necessary for the safety of investments will not be fulfilled by Government or municipal bonds. Such bonds do not in general furnish real and ample securities for the funds which are invested, because the actual securities are nothing more than the good faith and credit of the particular geographical divisions of country by which the bonds are issued. Moreover, the securities are not within the control of the individual investors, since they depend, not only upon the action of the bondholders generally, but also, in many cases, upon the action of citizens who are not bondholders.

In the application of these principles, however, a clear and perfect exception must be made in the case of the bonds which are issued by the Government of the United States. Such an exception must be consented to without objection or hesitation because (in the order chosen from a standpoint of utility), first, we are compelled to depend, for all security, not only of property, but of life and limb, upon the laws and government of our country, and therefore we can find no better reliance than its untarnished faith and credit; and second, because it is the highest duty of an American citizen to offer to the flag of our country, and to all that it represents, a loyal and an uncalculating devotion.

Similarly, it may be suggested that citizens should depend upon the faith and credit of the States in which they reside, and extremists may include in the list of territorial divisions which thus claim the fealty of their citizens, even counties, cities, etc. But this doctrine of patriotic reliance must not be carried beyond the limits of real safety or the requirements

of real patriotism. States, counties, or cities, forgetful of their true reciprocal duties, may repudiate, and have repudiated, their honest obligations, and states, counties, cities, and towns, as particular demarkations, are not to be presumed as essential to the life of a nation.

For these, and other equally apparent reasons, the rule with regard to Government or municipal bonds should be that the bonds of the United States Government are, as exceptions to the general rule, safe investments, and that all other bonds of this description must come under the general rule, and must, therefore, from the standpoint of greatest caution, be regarded as unsafe.

Many of our States have uniformly and without delay fulfilled all their financial obligations, and many cities and other divisions of territory have been equally successful in this respect. The bonds of such States, and of the larger cities, which have never failed to meet their obligations, are considered, not only by business men generally, but officially, by the laws of the different States, to be safe investments; and the moneyed corporations, which affect in such an important measure the fortunes of the people, are allowed to invest in them. In view of these facts, the rule which has been laid down may appear to have been so far strained in the direction of caution as to approach unreasonable timidity. Considering the nature of this work, however, the author is entirely satisfied that such is not the case, and that the rule, as it has been enunciated, will work out to the best possible advantage in the large majority of cases.

The bonds of counties, towns, villages, small cities, and school districts, at least, ought to be regarded as entirely out of the question for purposes of investment; and if, notwithstanding the conclusions which have been stated, it shall be decided to invest in State bonds, or the bonds of the larger cities, the following considerations may not well be neglected:

The past financial history of the particular State or city should be studied, and if there has been any wavering or deviation from prompt and strict methods of business, or any

tendency in that direction, investments should be made elsewhere. In many of the States the allowable amounts of indebtedness of cities, villages, etc., are limited by law to certain proportions of the assessed values of taxable property, while in other States there are either practically no such restrictions or the allowable limits are placed at dangerously high proportions. The former class of States should be invariably preferred for purposes of investment in bonds.

Another important consideration is the amount of indebtedness to which the particular State or city is already actually liable. The bonds of States and cities having small amounts of indebtedness must be presumed to be more secure than those of States and cities which are burdened with debts, although under the best circumstances it is possible that future legislation may so bankrupt States or cities that their bonds may turn out to be worthless.

Still another point which is not unworthy of consideration is the general character of the people who indirectly make the laws upon which the safety of such investments may depend. A community of industrious tax-payers may well be depended upon to insist upon just and fair legislation in this respect ; but, if a majority of the people shall happen to be socialists or anarchists, it is almost needless to remark that the lot of an investor in the bonds of the community will not be a happy one. It may also be remarked that the laws of a particular State cannot be safely relied upon as criteria for the safety of the bonds of that State ; for surely it is not to be supposed that the legislature of a State will look with suspicion upon the obligations of the State, or upon the obligations of the various cities, counties, or other divisions of the State. For this reason, the fact that each State by law may allow its savings banks and trust companies to invest in bonds of the State, or of its cities, counties, towns, and villages, must have but little weight in investigations concerning the safety of such obligations. The practical financial history of the particular State, and its general reputation outside of its own borders, will prove by far the more valuable indications of the conditions of its obligations, and the sound

judgment of investors must be relied upon for the advantageous supplementing of these facts.

Government bonds, and the bonds of the more prosperous States, are considered to be great conveniences for the purposes of commercial business, and the consequent demand for them often places them at values which are considerably above the par values. It must not be forgotten, however, that this statement holds good only when the bonds in question have considerable times to run before reaching maturity; for it is evident, since at maturity they will be paid or redeemed at their par values, that they will decline to their par values as the days of redemption draw near. The rates of interest which are paid upon first-class bonds of this description are comparatively low, the general rule that rates of interest vary directly as the risks which must be incurred being applicable for purposes of comparison between different bonds. More especially will this fact prove to be true concerning the actual rates of interest which will be received by the bondholders; for here the premiums at which such bonds are sold must be taken into consideration. As an illustration: Certain bonds which pay interest at the rate of four per cent. have recently reached a market value of one hundred and twenty-two—that is, for each one hundred dollars' worth at par values, the actual market values will be one hundred and twenty-two dollars, and the interest will be computed upon the par values. Therefore the actual rate of interest on amounts which have been invested in such bonds will be less than three and one-half per cent.

Government bonds are subject, at certain times, to fluctuations in the market values; if, therefore, the normal values shall be known and assured to the satisfaction of investors, and the bonds shall be purchased when there are slight temporary depressions, the incomes which are to be derived from the bonds may sometimes be increased by means of the profits which will be made from the increases in the values. Thus, if bonds, paying interest at the rate of four per cent., and having a normal value of one hundred and twenty, shall, by reason of a temporary depression, be purchased at the

price of one hundred and eighteen, held for a period of one year, and then sold at the normal value, the income from the investment, including the profit which is due to the increase in values, will be slightly greater than at the rate of five per cent.

Notwithstanding these facts, it is evident that bonds which will return low rates of interest (and no others apparently can be safely handled) will in general scarcely come up to the standard of investments which shall return fair and regular incomes. Government bonds may therefore be classed, most advantageously, among temporary investments such as trust companies and savings banks, which are available for the employment of idle money while awaiting more permanent forms of investment.

The advantage of issuing bonds with agreements that the bonds shall be exempt from taxation in the hands of the bondholders has been suggested in several of the States. The object of such provisions is evidently the offering of special inducements for the consideration of proposed purchasers of the bonds; for it is not to be presumed that the final object of such exemptions is the placing of additional premiums upon the bonds. Legislation of this kind may therefore be regarded, to a certain extent, as a confession of weakness—an official announcement that bonds cannot be sold to advantage in the ordinary manner. The probable results will be to cause prudent capitalists to look with suspicion upon such bonds and to abstain from purchasing them. As an inducement to other classes of purchasers, the exemption of bonds from taxation may likewise fail, for the reason that a considerable proportion of owners of personal property rely upon their abilities to hide personal property from the tax authorities, thus avoiding the rightful tax, and such persons will be likely to regard legal exemptions from taxation as of little value. To theoretically honest tax-payers, the exemption of their bonds from taxation will amount to an increasing of the incomes which are derived from the bonds. Such exemption may therefore be considered by some investors as a practical advantage; but, if State bonds

are to be included in the list of safe investments, a safer rule will be to decline to purchase bonds which have been exempted from taxation, on the ground that they are not free from indications of weakness.

The gigantic and costly enterprises of civilization are generally such as to be far beyond the reach and control of single individuals. And this indeed is well; for if single individuals could be possessed of wealth and power sufficient for such purposes, the influences of such individuals for evil would be well-nigh irresistible, and monopolies, in the worst (and proper) sense of the word would be established. For the purposes of such enterprises as are too great for the single individual, it has long been the practice of men to unite the energies and means of many, and thus, by aggregations of power, accomplish tasks which would be otherwise impossible. Such combinations, unrestrained, have long been considered to be dangerous to the general welfare, among other reasons, because of their tendencies towards restraints of trade and industry; and therefore they have been declared to be illegal, as against public policy, except when authorized and regulated by laws which are especially enacted for such purposes. And so it has been said that corporations are the children of the State.

Thus have grown up the corporations which, under the control of the laws, are so numerous and so powerful in this and in every other enlightened country.

During recent years there has also appeared a strong tendency to consolidate many small corporations or companies into immense single corporations, which are commonly, though ambiguously, called "trusts."

While, upon general principles, the tendencies of these last-named combinations may profitably be regarded as against the public welfare (although it is difficult to demonstrate, from our present experience, wherein the public has as yet directly suffered), the debt of civilization to legitimate corporations must not be forgotten. Almost without exception, the great public conveniences of transportation and of communication, and the greater industrial and financial

enterprises, which go far to make the greatness of nations, are directly due to corporations. Indeed, it cannot be disputed that the greatness of a nation may actually be indicated by the strength of its corporations. Therefore, while it is necessary, and perhaps becoming continually more necessary, that the restraining grasp of the law upon all corporations shall be in no wise loosened, it is also gravely to be apprehended that the prevalent spirit of animosity towards all corporations, indiscriminately consigning alike the good and the bad to a hoped-for destruction, is a sombre omen for the future tranquillity of our country.

The formation of corporations and the general principles of the issuing of stocks may be briefly illustrated in the following manner :—

Let us suppose that one hundred individuals shall be desirous of forming a corporation for the purposes of an extensive manufacturing business, and that the capital stock of the corporation, actually paid in, is to be one million of dollars, divided into shares of one hundred dollars each, and equally subscribed for by the one hundred proposed members. The requirements of the law (which generally consist of filing certain verified statements with the proper State officers) having been complied with, and the officers of the corporation having been elected, the capital is paid in by the several members, and a certificate, signed and attested by the proper officers, to the effect that the individual is the owner of one hundred shares, of the value of one hundred dollars each, in the capital stock of the corporation, is given to each of the subscribing members. The manufacturing business is then established and carried on by the directors and officers in the usual manner.

Shares of stock such as have been described are called "common stock," and entitle each stockholder to a *pro rata* voice in the management of the business, and to a *pro rata* share in the profits of the corporation, which at certain periods are divided among the shareholders as dividends.

A certain proportion of the shares of stock may be issued with agreements that they shall take precedence of the

common shares in the matter of dividends—that is, that a certain dividend shall be paid upon these special shares before any shall be paid upon the common shares. Such shares are called “preferred” or “guaranteed” stock, and, as a general rule, entitle the holders to no rights or privileges beyond those of the holders of the common stock, except the preference which has been mentioned. In a similar manner “interest-bearing” stocks or shares of stock, upon which the corporation agrees to pay regular and specified rates of interest, may be issued.

If, now, we suppose that the business of the corporation shall have been so well managed that the net annual profits shall amount to the sum of one hundred thousand dollars; the shareholders will receive dividends at the rate of ten per cent. per annum on their shares of stock, and the shares will be considered to be such profitable investments that they may be sold at a considerable premium, or excess over the par value. But suppose, on the other hand, that very little or no net profit shall be earned by the corporation in question. The market value of the shares of stock will evidently fall below the par value, and the shareholders will suffer losses. If the business shall continue to be profitless, or even worse, failure must result, and the shareholders may lose all that they have invested.

Let us suppose, further, that among the one hundred shareholders there shall be one man of exceptional shrewdness and ability, who, unhindered, would be able to carry the corporation out of its difficulties and into successful methods of business. It is obvious that his voice in the management of the business, against that of the ninety-nine other shareholders, will be powerless; he will therefore be compelled to meet his loss with the others.

Certain corporations, principally railroad and other transportation companies, are authorized by law to borrow money for necessary expenditures, and to issue therefor bonds which are secured by mortgages upon the properties of the corporations. Such mortgages are usually made to certain persons or institutions as trustees for the bondholders, and

in case of default in the payment of principals or interest, the trustees are generally empowered to take possession of and to sell the properties of the corporations which are covered by the mortgages for the benefit of the bondholders.

Before bringing to bear upon the subjects of corporation stocks and bonds the general principles of investment, the uniform inclination of recent legislation in opposition to corporations, or at least, tending towards an interference with the business of corporations, must be noticed, as affecting the profits, and therefore the values of the stocks and bonds of corporations. Upon the ground that corporations exist only by the permission of the legislatures, the dividends which are earned by certain kinds of corporations have been reduced by laws limiting the prices which the corporations may charge for the commodities which they furnish. Thus railroads have been restricted to charges of so much per mile ; street railroad companies, stage lines, etc., have been forbidden to charge more than certain amounts for fares ; and gas companies, water companies, and similar corporations have been compelled to limit their charges for the benefit of the public. Already the results of such legislation seem to be apparent in the reduced profits of certain kinds of corporations, and the further effect will apparently be the reduction of dividends, in general, to points which may be lower than should correspond with the risks which are incident to so-called investments in stocks. The incentive of large profits, which, to an unwarrantable extent, may tempt investors into forbidden paths, must therefore be eliminated from stock transactions and bond transactions. And such transactions must be governed only by the general rules, which will be found sufficient for the classification of them, and of all other forms of investment.

A brief glance at the rules by means of which we are enabled to determine the safety of investments will be sufficient to show that the stocks of corporations will in general fall so far short of the requirements that they ought, perhaps, not even to be included in the lists of possible investments. In a large number of cases the securities are fictitious,

and practically impossible of determination by the single shareholder ; the securities are entirely beyond the control of the individual stockholder ; the management of the business, which vitally affects the security and the returns, is beyond the control of the single investor ; and the income itself is practically an unknown quantity. Indeed, what is commonly called investing in stocks is, according to all the proper rules for the safe guidance of investors, merely a speculating, in which the speculator appears to be helpless in the hands of manipulators.

Nor does actual experience in any manner improve the character of such transactions. The proportion of those who deal in stocks, and are heavy losers, is so great that, by intelligent business men, eventual ruin is accounted a foregone conclusion for all such as begin the dangerous business. No sooner has a regular business man been seen about the stock exchanges than his business reputation will begin to suffer. A single speculation in stocks, even though, by good luck, it shall be successful, will often be sufficient to injure his credit and commercial standing. One of the first and most important of the questions of commercial agencies and surety companies, when investigating the responsibility and general reputation of an individual is : " Has he ever dealt in stocks ? "

Notwithstanding such remarkable facts, a very large business is done in the various kinds of stocks in nearly every large city in the country. The practical certainty of failure by no means appears to injure the business. The hundreds who are ruined on one day step quietly aside and make room for the hundreds who seem to be eagerly waiting to be ruined on the next day. The foolish person concludes, from the fact that crowds are to be observed about the stock exchanges during all business hours, that there must be good opportunities for making money there, and that the common stories of loss and ruin must be false. Such a conclusion will apply exactly as well to the practice of horse-racing, and to other forms of outright gambling ; for it cannot be denied that, when they are allowed by the laws to exist, or when they

are able to exist in spite of the laws, such businesses are exceedingly well patronized. The true explanation of the prevalence of stock speculating may be that man is by nature an adventurer, a seeker of fascination and excitement, a gambler; and that gambling in stocks is a lawful, and at the same time possibly a respectable, mode of indulging the propensity.

There are many different kinds of stocks, varying all the way from the stocks of old and substantial financial institutions, which, year after year, have paid to their shareholders handsome dividends, to those of far-off gold mines or silver mines, which may in fact exist only in the minds of the gullible shareholders. So also there are special circumstances under which shrewd and experienced men of business may, with comparative safety, own stocks: as where they shall own controlling interests in the capital stocks of particular corporations, or are officers of the corporations, and are thus able to control the management. But the purposes of this volume will not admit of discriminations in this respect. It is necessary rather to establish rules which will, to the greatest possible extent, avoid the necessity for close discrimination, for which process only a fortunate few are in all respects competent. The conclusion must therefore be that all kinds of stocks, without exception, are to be regarded as dangerous, and are to be avoided always and entirely.

With regard to railroad bonds, which are at least nominally secured by mortgages, and upon which regular rates of interest are promised, it may be said that, in theory, if not always in practice, they are far less dangerous than stocks. The remedy of foreclosure and sale is better than no remedy, even though the securities, when finally determined, shall prove to be inadequate. So the intention and the promise to pay regular interest go in the right direction towards proper investments. But the objections that the actual amounts of securities cannot be ascertained, and that the securities are not within the control of investors, are, nevertheless, insurmountable. Tersely put, the character of such bonds may be expressed in this manner: If the profits shall be sufficient

the interest and principles will be paid ; otherwise probably not. The safe rule cannot be mistaken ; it is to take no such chances, but rather to place our means in the surer investments which will be fully explained in the succeeding pages of this volume.

There is a general class of investment corporations, which is of comparatively recent origin, and which, because of the apparent feasibility of the claims of such corporations, and the widespread damage and loss of which such corporations have been the means, is deserving of special though by no means of flattering mention.

These organizations, acting frequently under imposing and grandiloquent names, and protected in some of the States by laws, or adjudications which ought not to exist, vary considerably in the details of management. The general principles of this class of corporations, may, however, be described as follows :

The various investors place their money in the hands of the particular corporation with the understanding and solemn agreement that the funds are to be loaned upon first-class real-estate mortgages only, not in sums corresponding to the particular amounts which are subscribed by the different investors, but in such lump sums as may be most advantageous. The different investors, therefore, cannot receive the actual mortgages as evidences of security for their money, but receive instead shares of stock or bonds issued by the corporation, and upon which the corporation agrees to pay rates of interest which are considerably higher than are consistent with real safety. In many cases the funds are loaned upon farm-lands in far-away States, and for this reason alone, though the affairs of such a corporation may be carried on with fair discretion and with absolute honesty, the chances will be largely in favor of loss and failure. And when the opportunities for rascality, which such methods will not fail to offer, shall be taken into consideration, the large amounts of money which corporations of this kind have been able to obtain (and often, as far as the investors are concerned, to lose) will indeed be surprising.

An application, however cursory, of the rules which have been explained will at once condemn this entire class of corporations as extremely dangerous. Indeed, ordinary intelligence ought to suggest that such corporations are often originally dishonest. But the persuasive powers of the talented promoters of such enterprises have often availed for the subjugation of reason. Investors have been informed that in this way only can small amounts be loaned with perfect safety and with high rates of interest ; that such large corporations have exceptional facilities for obtaining good loans and for properly estimating the qualities of securities ; that the officers and managers of the corporations are men of large means and experience who are themselves heavily interested in the corporations ; and that the shares of stock or bonds are merely forms which are necessitated by the characters of the corporations, while the actual effect of the arrangements is to make the investors, not speculators in these stock of corporations, but *bona fide* holders of first-class mortgages. And so, many worthy persons, forgetting the plain facts that mortgages over which the mortgagees have no control are mortgages only in name, and that actual evidences of the investment of funds in the manners which are promised are indeed difficult to obtain, have suffered ruinous losses, only to enrich the ingenious and unprincipled managers of these loan-corporations.

Still another general class of investment corporations which has laid special claims to a treatment different from that which is accorded to ordinary corporations, because of the peculiar and apparently substantial characters of investments, must be noticed. Reference is intended to the land companies, in which the land, instead of being the subject of mortgages only, is the actual property of the corporations. The theory of such corporations rests upon the familiar proposition that a concentration of similar interests will be able to accomplish what the separated interests cannot. For the purposes of the corporations in question, various parcels of land are appraised by experts and are deeded to the corporations by the several owners, who receive for their lands shares of stock in the

corporation corresponding, in par values, to the appraised values of the parcels of land.

The corporations are then presumed to employ extraordinary energies for the development of the cities or villages in which the lands shall be situated, and for the consequent enhancement of the values of the lands, whereby handsome profits will be realized for the shareholders. In certain respects, enterprises of this nature may be considered to be promising speculations for alert and skilful dealers in real estate. There are at least some securities for the funds of the corporations, and if there can be proper assurances that affairs will be wisely and honestly managed, there will be probabilities that the securities will be adequate in the long run. But the transactions of such land companies cannot, with propriety, be considered as investments. They are speculations in every precautionary sense of the word. Moreover, they will not bear the scrutinizing application of the rules which have been so often mentioned. Such corporations must therefore be declared to be unsafe for the purposes of investors. Other forms of corporations claiming to accomplish the purposes of investments are to be found, and it cannot be doubted that future years will bring forth still others which will develop methods and principles which will then appear to be novel and practicable. But it will invariably appear, only the more conclusively by the careful examination of special cases, that the faithful employment of the simple and convenient rules by which the safety of investments is to be determined will safely guide investors around the pitfalls which will always beset their ways, and into the comparative serenity which may thus happily be attained.





CHAPTER VIII

MORTGAGES

THE word "mortgage" signifies a *dead pledge*, the name being derived from the fact that the mortgagor holds possession of the mortgaged land, while in the *vivum vadium*, or *living pledge* of former times, the mortgagee held possession of the land and applied the rents and profits to the payment of the debt.

A mortgage is a lien upon real estate which is given to secure the payment of a debt, usually money. It is, in form, an absolute conveyance of the land by the debtor (the mortgagor) to the creditor (the mortgagee) with an agreement to the effect that, if the borrowed money shall be repaid according to the terms which are specified, and if certain other agreements shall be fulfilled, the conveyance shall be void, otherwise to be in full force and effect.

Strictly speaking, the legal effect of such an agreement will be to forfeit all claims of the mortgagor upon the mortgaged land as soon as any default shall be made by the mortgagor; or, in other words, the slightest failure on the part of the mortgagor to perform his agreements will deprive him of his land and give it outright to the mortgagee. And such, in fact, was formerly the law. But the courts, recognizing the great severity of the law in this respect, gradually overcame it, and finally decreed that the mortgagor shall have the right to redeem the mortgaged land, by the payment of the borrowed money and the necessary expenses, at any time after default, until such right of redemption shall have been cut off by regular process of law. This right to

redeem the land after default has been made is called the mortgagor's *equity of redemption*, and the proceeding, on the part of the mortgagee, which finally destroys the equity of redemption is called the *foreclosure of the equity of redemption*, or simply *foreclosure*.

For all practical purposes, then, a mortgage may be described as an agreement between a debtor and a creditor, to the effect that the debtor will repay the borrowed money at a certain time, with interest at a certain rate, and that, in case of his failure so to do, the mortgagee may, by process of law, sell a certain designated piece of land and, out of the proceeds, repay the debt with the interest which has been agreed upon, and the expenses of the proceeding.

It will be observed that two principal elements are present in the transaction of mortgaging a piece of land ; first the debt, which is the foundation of the transaction, and second the lien upon the land which is created for the purpose of securing the debt. The lien upon the land is created by the mortgage deed (commonly called simply the mortgage) which is placed upon record in the county where the land is situated, as a notice to the public, and the debt is created by the delivery of the borrowed money to the debtor. For the purpose of evidencing the debt, however, the debtor executes and delivers to the creditor a bond, which is a legal and binding acknowledgment of the debt and a promise to repay the same with interest. Thus the transaction has come to be termed an investment in *bond and mortgage*.

In some States the evidence of the debt accompanying the mortgage is a promissory note instead of the more solemn bond, but the effect is practically the same in either case.

In all cases there is, or at least is presumed to be, a margin or an excess in the value of the mortgaged land over and above the amount which is secured by the mortgage ; this margin or excess of value is termed, rather ambiguously, the mortgagor's *equity* in the land. To illustrate, let us suppose that a person who is the owner of a piece of land which is worth ten thousand dollars, shall borrow five thousand dollars from another person, and shall mortgage the land for the

amount of the debt. There will be, in this case, a margin of five thousand dollars, which is the mortgagor's equity in the land.

The equity, notwithstanding the absolute form of the mortgage, still belongs to the mortgagor, and may itself be mortgaged. So there may be any number of mortgages upon a piece of land, termed the first mortgage, the second mortgage, the third mortgage, and so on, each having its accompanying bond, and each, after the first, attaching to whatever of equity remains over and above the amounts of the prior mortgages. For example, in the case which has been last supposed, the mortgagor may put a second mortgage, for two thousand dollars upon the land, then a third mortgage for one thousand dollars, and finally a fourth mortgage for one thousand dollars. In such a case the first mortgage will cover the entire value of the land, the second mortgage will cover only the equity of five thousand dollars, the third mortgage only the second equity of three thousand dollars, and the fourth mortgage only the third equity of two thousand dollars.

It may be surmised from these statements, no less than from a general conception of the principles of equity, that a mortgage will take precedence of only such liens as may be put upon the mortgaged premises after the lien of the mortgage has attached; or in other words, the prior lien, in point of time will take precedence over all subsequent liens, excepting only such public liens as by law cannot be interfered with, such as taxes and assessments. And so, if a judgment, which is a lien upon real estate, shall exist against a mortgagor at the time of recording a mortgage against his real estate, the lien of the judgment will take precedence of the mortgage, and the judgment-creditor may, by process of law, sell the mortgaged premises to satisfy his lien, without regard to the mortgage.

There is, however, one somewhat remarkable exception to this general rule, which arises in the case where a purchaser of real estate shall give back to the vendor, at the time of the execution of the deed, a mortgage to secure a part of the purchase-price of the real estate. Such a mortgage is

called a *purchase-money* mortgage, and takes precedence of judgments which may exist against the mortgagor at the time. The theory upon which the principle of the purchase-money mortgage is founded is, that the deed and the mortgage are simultaneous in point of time, and that therefore there is no period of time existing between them during which judgments can attach.

For these reasons, although the existence of judgments and such liens should be fully determined by examinations of titles, purchase-money mortgages may be considered as possessing advantages over mortgages of the ordinary description.

So much of preliminary definition and explanation has been thought to be necessary to a proper understanding of the subject of mortgages. We may now proceed intelligently to a particular discussion of the subject, for the purposes of determining the value of mortgages as investments, and of discriminating wisely the conditions upon which the success of investments in mortgages will largely depend.

If we presume a perfect mortgage, or, otherwise expressed, if we assume that all the conditions upon which the quality of the mortgage depends shall be the best possible for such a form of investment, we shall discover that the most rigorous and searching application of the general rules of investment will fail to disclose any serious objection to it. Such a mortgage will be in all respects a perfectly safe investment, because, first, there will be a real and ample security of the best character; and, second, the security will be perfectly within the control of the investor, for the investor alone can foreclose the mortgage at any time after a default shall have been made. The returns from such an investment will be fair and regular because of the agreement, supported by the penalty; and sure, because if, by any chance, the mortgagor shall fail to pay them, the ample security will not. In addition to these qualities, it may be said that a mortgage is a true loan-investment, having all the attributes of an investment and none of the attributes of a speculation. It costs the investor practically nothing, all expenses being paid by

the mortgagor ; and comparatively little time and effort will be required to keep the investor at all times informed as to the condition of the investment in all important respects.

A perfect mortgage is, then, a perfect loan-investment. But a method, ever so perfect in itself, may be rendered imperfect by neglecting the considerations which are necessary to make it perfect, or by misapplications of the exact principles which are involved. So, mortgages may be as nearly perfect as investments can be made, they may involve considerable risks and considerable difficulties, or they may be of such characters as to cause certain losses of interest and of considerable portions, if not all, of the principals, according as are applied the principles which have been explained in a general manner, and which will now receive a particular consideration in connection with the subject which is at present under discussion.

As we have seen to be the case with all kinds of investments in general, the two great considerations affecting mortgages are that they shall be, as nearly as possible, absolutely safe, and that they shall return fair and regular incomes. With regard to the latter of these considerations, mortgagees have but to agree with mortgagors concerning the rates of interest and the times and manners of payment, and to include such agreements properly in the written instruments, and the considerations which will go to secure the payment of the principals will, at the same time, provide securities for the proper and regular payment of the interest.

The safety of mortgagees will depend upon many particular conditions, all of which may be included in two general requisites, namely : the securities must be in all respects good and sufficient, and the requirements and precautions of the law must be carefully complied with.

Proceeding now to investigate the conditions which go to make up the first general requisite, we shall find the first to be that the title of the mortgagor to the security (the land) must be perfect. To this end, the whole title to the mortgaged premises must be in the mortgagor; that is, the mortgage must cover the whole title, not a half-interest or an

undivided interest of any kind; for it is evident that if money shall be loaned on a part interest in certain land, and the mortgagee shall be compelled finally to foreclose the mortgage and to buy in the premises, the mortgagee will then be in the position of a part owner with the remaining owners, and the control of the security will be only partial. Moreover such a mixed ownership will have a tendency actually to decrease the value of the security, because it will lessen the number of possible purchasers, comparatively few persons being willing to own land in common with others, especially if the remaining owners shall happen to be entire strangers. Hence, if a certain piece of land shall be owned by ten persons in common, and the land shall be worth the sum of fifty thousand dollars, it will be extremely unwise to estimate the value of one share in the land, for the purposes of a loan, at five thousand dollars. A loan on a one-tenth undivided interest in land must be considered as a dangerous one; but if, for special reasons, such a loan shall be made by an investor of unusual shrewdness and business ability, the value of the security will be estimated at much less than one tenth of the entire value of the land.

The mortgagor's ownership of the land must be absolute. That is, he must own the land in fee-simple; for a mortgage upon an estate for life, a leasehold or other conditional or uncertain ownership, will necessarily be a poor investment, the real security (the land itself) being beyond the control of the investor.

In order that the mortgagor's title to the mortgaged land shall be perfect, the land must be free and clear of all liens, incumbrances, and claims; or, which is equivalent, the mortgage must be a lien which is prior to all others upon the land. This rule will have the effect of precluding all except first mortgages from the consideration of investors, and an investigation of the character of second and other subsequent mortgages, as a class, will prove, independently of the general rules, the practical value of such a result. As has been explained, a second mortgage attaches merely to the equity in the land, which may remain over and above the first

mortgage. If, therefore, the first mortgagee shall foreclose the first mortgage, the second mortgagee, receiving notice of the foreclosure, must see to it that the land, at forced sale and possibly at a disadvantageous time, shall bring a price which shall be high enough to pay both mortgages ; otherwise the second mortgage will be cut off and partly or entirely lost. And similarly, if it shall become necessary for a second mortgagee to foreclose her mortgage, she must be prepared to buy in the land and to pay the amount of the first mortgage in cash ; else her second mortgage will probably realize nothing.

There are, as a matter of course, possibilities under which second mortgages may be perfectly safe investments, as in the case where the amount of a first mortgage shall be extremely small compared with the actual value of the security ; but such cases are indeed rare, and it may be taken as a rule of very general application that second mortgages are dangerous investments. As for third, fourth mortgages, etc., they must be regarded as entirely out of the question. The author has no hesitation in saying that he has never known a third mortgage which finally returned to the mortgagee the entire amount which had been invested, together with the interest.

There is, however, one class of second mortgages which, if other considerations shall be properly fulfilled, may be considered to be safe : that class in which first and second mortgages shall be held by the same mortgagee. Such cases frequently arise in the following manner : the owner of the mortgaged land, being in need of money, may request the mortgagee to advance a further sum, and to receive therefor a second mortgage upon the same land. In such cases, it is obvious that the two mortgages become practically one mortgage in the hands of the mortgagee, and the question of safety becomes dependent only upon the value of the security. Thus, if a loan of ten thousand dollars, upon a piece of land which is easily worth twenty thousand dollars, has been made, and afterward a loan, to the same mortgagor, of two thousand dollars, secured by a second mortgage upon the same land, shall be made by the same mortgagee, the entire

transaction will be equivalent to the loaning of twelve thousand dollars upon a first mortgage, with a security of twenty thousand dollars.

Many other incumbrances and imperfections of title may exist which may seriously injure or entirely destroy the value of mortgages as safe investments ; but these, and, in fact, all the circumstances and conditions which may affect titles, can be discovered only by the lawyers and expert searchers, who ought in all cases to be employed for the thorough examinations of titles. No less care should be taken in the examination of titles to the securities upon which loans are to be made, than if it were proposed to purchase the lands outright ; for the only safe theory upon which investments in mortgages can be made, is that the mortgagees will eventually be compelled to foreclose their mortgages, and thus finally become the absolute owners of the mortgaged lands. In some cases the amounts of mortgages may be so small that the expenses of examining the titles to the lands may be regarded as hardships which it will be unnecessary to put upon the mortgagors. Such cases should, in fact, never exist ; for if a loan shall be so small as not to require proper precautions, the formality of a bond and mortgage may be regarded as absurd. The favor of a small loan should be refused, or it should be generously accorded without other security than the promise of the borrower to return it.

Formerly the examination of titles to real estate was performed almost exclusively by lawyers and conveyancers, who in many cases made a specialty of this branch of the legal profession ; and a very important part of the duties of lawyers is still and must continue to be the examination of titles. But, during recent years there have come into existence certain corporations the business of which is to examine titles to real estate, and to guarantee the titles for the benefit of purchasers and mortgagees. These corporations have, generally, guaranteed titles to the extent of many times the amounts of their capitals and responsibilities ; it may be regarded as a fact beyond question that a failure of a small

proportion of the titles which have been guaranteed by a particular corporation of this kind would be sufficient to ruin the corporation.

When titles are examined by competent lawyers, the regular searches for liens and incumbrances are often made by the public searchers and officials from the actual public records, and are therefore supported by the responsibilities of the counties in which the searches are made. Moreover, the strictest and most minute consideration of every fact and condition which may in any way affect the titles is given by the lawyers, who, if any persons are, should be able to detect legal imperfections, and to form correct conclusions concerning the effects of such imperfections.

On the other hand, examinations of titles by corporations of the kind which has been mentioned are often made by clerks and employees, and from books which are themselves copies of the public records, made by employees of the companies. It is scarcely to be presumed that each of the many titles which shall be examined will receive the careful attention of competent lawyers who are employed by such a corporation. In the one case, titles to real estate are in fact good, and purchasers or mortgagees know that they are good, because they have been properly examined by those who are by profession best qualified for the purposes in view; while in the other case the interested parties will receive written guarantees from the title companies, to the effect that if the titles shall prove to be defective the companies will make good the losses.

From the very nature of the case, it is impossible that any person or company shall be more skilful and competent for the examination of titles than thoroughly trained and responsible lawyers. As well may we expect a business man to be more expert in physics than the trained physician, or the layman to excel, in scriptural knowledge, the experienced theologian.

But whether these guaranteeing corporations will prove to be equal to the lawyers in this respect, is a question which cannot be easily answered. There are undoubtedly

corporations of this kind which have all the appearances of substantial and reliable concerns, and which, as far as can be determined at present, have never been the causes of loss or injury to their patrons. The difference in the expense of the two methods will be generally quite immaterial, and it will be consistent with strict propriety if the author of this work shall express no direct preference in the matter, remarking, however, that, in either case, considerable care should be taken in the selection of the particular instrument which is to perform such important services.

A second condition which is essential to the safety of mortgages is that the securities shall have ample actual values; and in this respect actual values must be understood to signify values which may be quickly, and at any time, realized from the securities. This matter has been discussed in a general manner at considerable length in a previous chapter of this work ; it now becomes necessary to examine in detail the various facts and circumstances which may affect the values of securities in the particular case of mortgages upon real estate.

The first inquiry in the line of this examination must be concerning the laws which govern mortgages, or the laws of the particular States in which proposed investments in mortgages are to be made ; for, be the cash value of mortgaged lands ever so great, the lands will be a worthless security if the laws shall be such that mortgagees cannot foreclose their mortgages if such action shall at any time become necessary.

The laws of the different States affecting mortgages are so various, and at the same time dependent to such an extent upon the changing moods of the legislatures, that it has not been considered advisable to refer to them specifically here. In the chapter which is devoted to the discussion of the general principles of investment, reference has been made to the fact that in certain States there is a tendency to discriminate against non-resident investors, and that laws have been enacted probably for the distinct purpose of interfering with the remedies of investors after the investments have been made. With regard to mortgages, such laws may be

described generally in the following manner: They may give to mortgagors the right to redeem mortgaged lands for considerable times—one or two years—after the mortgages shall have been foreclosed, thus making lands in the hands of mortgagees unsalable and useless for the time being at least. In some cases mortgagors are permitted to retain actual possession of lands during the periods which have been referred to, and the results in many cases will be that, when investors shall finally come into the possession of their securities, the securities will be found to be reduced to states of extreme dilapidation, which no amount of caution on the parts of investors will be able to prevent. Such iniquitous laws appear indeed to be deliberate challenges to the base and revengeful tendencies of dishonest debtors, and should meet with nothing but outspoken condemnation from all good citizens.

The process of foreclosure may be made so tedious and difficult as to be a serious obstacle in the way of investments in mortgages. In strict justice, the proceeding of foreclosure should be brief and simple, for the questions which are to be determined are neither numerous nor difficult—they are, moreover, generally admitted. A certain amount of money has been loaned upon certain conditions, the conditions have been violated on the part of the debtor, and the law prescribes the remedy—these are the facts which are to be determined, and such determination should be a simple and an expeditious matter. But in some of the States there may be laws which require the lapse of a year or more after default has been made, and before foreclosure proceedings may be commenced by mortgagees; or that unreasonably long times shall be given to mortgagors to put in defences to the proceedings; or that the sales which are decreed by the court shall be advertised for unreasonably long periods of time; or that mortgagors may, after putting investors to the delays and expenses of foreclosure proceedings, dismiss the proceedings at any time by simply paying the amounts which shall be due; or that any agreements which may be made between mortgagors and mortgagees for the purpose of facilitating foreclosures shall be void.

The avowed purpose of such laws will be the giving to honest mortgagors of ample time within which to overcome temporary difficulties, and finally to meet their just obligations. But, generally speaking, they will not fulfil such beneficial purposes. It cannot be doubted that, in the States where similar laws have already been enacted, foreclosures which are carried to final conclusion are none the less frequent. And laws which are similar to those which have been suggested have been in some cases carried to such excesses that the conclusion that they are designed for the sole purpose of interfering with and delaying mortgagees in the pursuit of their just remedies, cannot be avoided. But, be the actual purpose the one or the other, the practical result of all such legislation is to allow mortgagors unnecessarily long periods of time, during which, without the payment, by them, of interest, taxes, assessments, or the expenses of necessary repairs — in short, entirely at the expense of the mortgagees — they may quietly retain the possession of premises after defaults which will finally, and should at once, deprive them of all rights to the premises.

The laws in relation to the taxation of real estate may be such as to discriminate unfairly against lands which, from their nature, are most likely to be in the possession of non-resident mortgagees ; or such laws may be enacted after certain kinds of real estate have generally become, through foreclosures, the property of non-residents. Of this nature are laws requiring the fencing of wild lands and deserted farms, nominally in order to prevent claims against the land by squatters; laws which allow the public authorities, at the expense of the owners, to plough so-called fire-trenches around lands upon which nothing at all combustible may exist, or to fill up wells and water-courses on abandoned farms, thus making the land useless for grazing purposes.

The precautionary measure which is to be adopted in view of these facts, is the absolute avoidance of all investments, not only in States which, at the time, shall show tendencies in the direction of such unjust laws, but also in States which have, at any time, countenanced such iniquitous legislation.

And for this purpose it may be necessary, as has been previously suggested, to make careful inquiries concerning the laws affecting mortgages in the States where it shall be proposed to loan money; or, more simply, to confine such investments to the States with the legislation and tendencies of which investors are familiar, and upon the habitual fairness and impartiality of which they may safely rely. And here it may be advantageous to remark that investors may, with equal safety, avoid all localities which are already heavily burdened with mortgages, and in which debtors are in largely preponderating numbers.

It will also be to the advantage of investors to inquire into the methods of taxation which may affect mortgages before making loans in States to which they are strangers.

There are two general methods by which real property, upon which mortgages exist, may be taxed: the entire tax may be charged upon the real estate without reference to the amounts of the mortgages, and consequently it must be paid by the mortgagors or owners; or the tax may be divided into two parts, one of which is charged against the real estate and the other against the mortgages as personal property, which latter tax will have to be paid by the mortgagees. The former method, doubtless because of its simplicity, is the more general, and, it is almost needless to remark, much more agreeable and advantageous to investors.

Probably to a greater extent than in any other form of loan-investment, the safety of mortgages is affected by the general rule that the rate of interest which shall be received will be directly proportional to the risks which must be incurred. And the reasons which sustain the rule are especially clear in the case of mortgages. First-class mortgages on real estate being almost universally considered as among the best possible forms of investment, there is very seldom any lack of money awaiting such investments. The supply often exceeds the demand, and the result of such conditions is, as always, to decrease prices, or, in the case of mortgages, to lower the rates of interest. The actual values of real estate in various localities are not difficult to ascertain, and are

therefore comparatively well known to investors generally. Hence, just in proportion as relative securities shall become poorer, the gross amount of money which is available will become less. In other words, just in proportion as securities shall become poor, the demand will exceed the supply of money, and the price of money—the interest which must be paid for the use of it—will increase. There is naturally a much larger number of applications for money to be borrowed upon poor securities than of opportunities for really first-class loans; because in the majority of cases those who wish to borrow money do not own first-class real estate, and, *vice versa*, those who own first-class real estate do not wish to borrow money. And in addition to such natural conditions is the fact that there are many shrewd and dishonest persons who undertake, quite often successfully, to borrow on mortgages such large amounts that they can allow the mortgagees to foreclose their mortgages and still retire from the transactions with profits, and to the eventual losses of the mortgagees.

So-called "builders' loans," and mortgages which are made to secure future advances, are largely responsible for results of this description. They are generally made in the following manner: A person claiming to own valuable unimproved real estate free and clear may desire to improve the real estate by the erection of buildings of certain descriptions, and to borrow the money which is necessary for the erection of the buildings upon the security of a mortgage, at a high rate of interest and covering both land and buildings. To this end, the mortgage is at once made and recorded, with an agreement that the mortgagee shall advance to the builder certain amounts of money at certain stages in the erection of the buildings. If, now, the builder shall be dishonest, he will attempt, by every possible means which is known to such tricksters, to hold back the payment of all bills which are due for work done upon the buildings, and, at the same time, to receive as much money as is possible from the mortgagee. Just as soon as these conditions shall have reached the maxima, and the builder may make a profit by so doing, he

will throw up the whole contract, and leave the astonished mortgagee to foreclose her mortgage and to find herself finally possessed of a half-finished, and badly constructed building, which is almost buried beneath the liens of contractors, mechanics, and material-men, notices of which liens may then appear with such alacrity as to suggest understandings between the builder and the claimants. It will be beneficial, in the great majority of cases, and will tend but slightly toward injustice, if we conclude, as an invariable rule, that all transactions of this nature are deliberately fraudulent, and must accordingly be dispensed with entirely.

These explanations having been made, a needless repetition may be avoided by observing that the conclusions which have been reached in the chapter on the general principles of investment are perfectly and especially applicable to the subject of mortgages, and may well receive the serious attention of those who shall propose to invest in mortgages.

The actual values of the lands which form the securities for mortgage investments will depend directly upon the localities in which they shall be situated, upon the purposes for which they shall be used and intended, and upon the characters and kinds of buildings and other improvements which shall be erected upon them. With regard to the question of locality, it may be remarked that large cities, which are established as industrial centres, and in which the populations, as well as the number and extent of industries, are steadily increasing, will prove to be the most advantageous; while farming districts and small villages which are situated at considerable distances from large cities will furnish the poorest of all mortgage-investments. In the one case, real estate values must increase steadily in the main; in the other, experience has indicated beyond doubt that the general tendency of lands will be to decline in values for many years to come. Also the fluctuations in values will be less in large cities than in rural districts, and in the former it will be by no means as difficult to find ready cash purchasers of real estate in times of depression.

The general character of the climate, and the topographical

features of the surrounding country may also be considered, as well as the commercial tendencies of the particular neighborhood. Thus the calculations of an investor will probably come to naught if it shall be presumed that the population is destined rapidly to increase, and the general industry and prosperity to flourish, in a notoriously unhealthful and enervating climate. And so the general character of the residents of a city may be so squalid and careless, or the drainage or drinking-water so bad, as certainly to create disease and epidemic, from the notoriety of which the neighborhood will very slowly, if ever, recover. The character of the soil may be such as to render the foundations of buildings unsafe ; the land may be so situated as to be subject to inundation or freshet ; or the stone, clay, or other building material upon which the neighborhood shall be dependent, may be of such poor quality as seriously to endanger the buildings which will be constructed of the bad material.

Such considerations will prove to be by no means useless, and may at times be well worth the trouble or possible expense which they may necessitate. In like manner, the natural resources of localities may be advantageously considered. A small city which is entirely dependent upon river communication may be ruined by the filling up of the river's channel ; a village or city which is entirely supported by an extensive manufacturing concern, lumbering company, or mining corporation, will often meet its death-blow in the failure of the industry upon which its inhabitants must depend for sustenance ; a city which has been built up by a canal, or river communication, may be so located that the building of a railroad at a distance may divert the business which supports the city, and thus almost destroy it. And so there are almost countless considerations of natures similar to those which have been mentioned, which will often prove to be of great service to careful investors. The task of such an investigation will be by no means of such magnitude as ought to abash proposed mortgagees. To a properly observing and discriminating person, a few visits to the particular locality, together with a reasonable amount of inquiry,

will generally be sufficient for the purposes in view, and the task may be still further diminished, in any one particular case, by the cultivation of a general disposition to study these questions and to keep well in mind the results and conclusions of former investigations of a like nature. A general cultivation of this kind will, in the course of some years, develop a keenness and minuteness of perception which will enable investors, without serious difficulty, and almost by force of habit alone, to distinguish advantages and disadvantages which, to the novice, will seem to involve almost an incalculable amount of labor and trouble.

An exceedingly dangerous practice is the investing of money in mortgages upon distant timber lands and mineral lands. The danger in the former kind of securities lies in the facts that destructive fires are frequent occurrences in heavily wooded sections, and that the values of such lands, after the timber shall have been removed or destroyed, will be exceedingly small. It is also possible that timber-thieves may steal enough valuable timber from unguarded lands to take away materially from the value of the land. So-called mineral lands may be very valuable property, or they may be entirely valueless, and none but experts will be able correctly to determine such values. Consequently the opportunities for fraud which are offered by this kind of real estate are exceptional. Many a mortgagee of supposed rich iron-lands, or lands abounding in more precious metals, has found at last that the valuable metals existed only in the representations of the promoters, and that the security for the mortgage is actually worthless. But the rules of investment, which have already been deduced and explained in this chapter, and in the chapter on the general principles of investment, will be found sufficient, if properly applied, to prevent the possibility of this particular kind of disaster, no less than of others of equally serious natures.

With regard to the effect upon securities of the purposes for which they are to be used, and the characters of the buildings and improvements which are erected upon the lands, it is obvious that, in many cases, the one consideration

will include the other, since the characters of buildings usually depend upon the businesses for which they are intended and especially adapted.

The consideration of the subject of mortgages, up to this point, has proceeded without special distinction between improved and unimproved real estate. We have now to inquire particularly into the subject of improved real estate as a security for mortgage-investments.

As a rule, applicable to the large majority of cases, it may be stated that improved real estate will prove to be a better security than that which is unimproved. And the most practical reason for the statement is that improved real estate is, in a measure at least, self-supporting, that is, its rents and profits will pay, at the best entirely and at the worst partially, taxes, interest, and other necessary expenses; while unimproved real estate is generally, in this respect, a dead weight upon the owner. Real estate which is judiciously improved will return to the owner a fair income over and above all necessary expenses, and it is plain that the more profitable a building may be to the owner, the better will be the security of the mortgage.

It follows from these statements, and is sustained by the results of general experience, that, other things being equal, mortgages for large amounts upon real estate which has been improved by the erection of costly buildings will be more advantageous than small loans upon securities of poorer qualities with respect to improvements. But these rules cannot be considered to be invariable, for there are other requirements upon which the force of the rules will largely depend.

A necessary condition for the advantageous improvement of real estate is that the buildings which are to be erected shall be suitable in value and character to the land upon which they are to stand. Thus, an expensive building which has been erected upon a lot of little value will be a poor security; a cheap, poorly constructed building erected upon a valuable lot, instead of increasing the value of the security, may actually tend to diminish it, because of the necessity of removing the building before the lot may be improved by

the erection of a suitable building ; and the value of a very desirable lot may be seriously diminished by the erection of an unsuitable building which may be too expensive to be advantageously torn down and yet not good enough for the best employment of the lot.

It is a self-evident fact that the actual construction of improvements upon land which shall be proposed as a mortgage-security must be carefully considered, for a building which is so poorly constructed as to be in danger of condemnation by the authorities will almost certainly cause trouble and loss to the mortgagee. For the purpose of avoiding such a contingency, the principal parts of buildings upon which it is proposed to loan money—the foundations, supporting walls, plumbing, etc.—may be at least generally inspected.

So also the characters of surrounding improvements, or the characters of the buildings in the immediate neighborhoods, may affect the values of securities to a very important extent. An expensive private house will be almost valueless if it shall be erected in a neighborhood which is surrounded by factories of a noisome character or by cheap and crowded tenements. A building which is intended for business purposes will probably stand idle and useless if it shall be built in a neighborhood where there are no possible facilities for business. If, therefore, the character of the particular neighborhood shall be permanently determined and fixed by the fact that it is entirely filled up by buildings of a particular kind, loans may safely be made upon the most costly and valuable of the buildings. But, on the other hand, if the neighborhood in question shall be only partly built up, and its final character therefore still undetermined, loans must be made with great caution, and apparently desirable lots which are unimproved, or which are inexpensively improved, are to be preferred.

The conclusion may very properly be reached, from these remarks, that neighborhoods which are well improved will be the most advantageous for the purposes of mortgagees. And such a conclusion may be deduced from other considerations which are equally forcible. Thus the value of real estate

in a well-improved neighborhood will have less of a tendency toward violent fluctuations than in an unsettled neighborhood; and further, the questions of sewerage, street-paving, and water supply, with their attendant inconveniences and heavy assessments, will be entirely out of the way in neighborhoods where these improvements have been already finished and paid for.

The comparative values of similar kinds of real estate, having reference both to the locations and to the kinds of improvements, in different cities, will be well worth a considerable study. Thus the differences in the values of pieces of real estate which seem to have identical values, because of the apparently equal values of the lots and the assured equal costs of the improvements, when situated in different cities, will often prove to be astonishing to those who are unaccustomed to such comparisons. These remarkable variations are to be explained by the facts that the marketable values of similarly located vacant lots in different cities differ widely because of the different requirements and demands of business, and that the values of similar buildings which are located in different cities will vary widely because of the differences in the amounts of rentals which may be obtained.

If investors, who have been accustomed to loaning money on mortgages in cities where real estate values are comparatively low, shall undertake to invest in mortgages in cities where these values are high, the result of a failure properly to consider these facts may be the refusal of first-class applications because of the investors' suspicions that the valuations are in fact much too high. And, on the other hand, if relative actual values in the cities where proposed investments are to be made are much lower than in the cities where the investors have been accustomed to loan money on mortgages, the probable result of neglecting the considerations in question will be inadequate securities and consequently bad investments.

Careful comparisons of various values in cities where proposed investments are to be made, in connection with inquiries into the business advantages and renting capabilities

of the real estate, will in all cases lead to satisfactory solutions of such apparently difficult problems.

Considering now the different kinds of buildings which may form such important parts of securities for loans, the most valuable general rule will be ascertained to be that a preference should be given to buildings of a general character; or, otherwise expressed, buildings which will be adapted, without serious alteration, to the greatest number of uses, or to the most common use. Accordingly, mortgages upon general business buildings, such as office buildings and stores, and upon private houses will, as a general rule, prove to be the most advantageous; while mortgages upon factories which have been built for, and especially adapted to, particular and unusual branches of manufacture, will, in the majority of cases, prove to be unsatisfactory. There are undoubtedly many instances in which buildings which have been erected for particular purposes, and which are by their manners of construction poorly adapted to other purposes, have turned out to be perfectly successful, and consequently highly satisfactory to the mortgagees. But instances of this kind are exceptional, rather than general, and tend in a greater degree toward the experimental than should be allowed to seekers after safe investments.

Circumstances must necessarily have profound effects upon this particular branch of the subject. Many of these circumstances have been already explained and provided for, and good judgment and discrimination must be employed in order to distinguish special cases from general ones. But, assuming that correct conclusions have been obtained in this respect, or that the investigations of inquirers have resulted in dilemmas which compel a recourse to some general rule of conduct, a list of improvements, with respect to kinds and uses, in the order of their general utility as securities for mortgages, may be given as follows:

- (1) First-class business buildings, such as office buildings and stores.
- (2) First-class private residences.
- (3) Second-class office buildings and stores.

- (4) Second-class private residences.
- (5) First-class general loft buildings.
- (6) First-class family hotels and apartment houses.
- (7) First-class public hotels.
- (8) Dock properties.
- (9) Second-class loft buildings.
- (10) First-class theatres.
- (11) First-class stables.
- (12) Second-class theatres.
- (13) Second-class stables.
- (14) First-class storage warehouses.
- (15) Ordinary apartment houses.
- (16) Tenement houses.
- (17) Second-class warehouses.
- (18) First-class club-houses.
- (19) Factories.
- (20) Churches and schools.

This table is the result of many careful considerations which appear to affect particularly the class of investors for which this work has been written. Thus, general desirability, probabilities of foreclosure, probable necessary expenditures for repairs, probable difficulties of management, including controversies with city authorities and other annoyances, probable renting capabilities, probable enhancements in values, probable tax rates and insurance rates, and many other questions have been carefully considered.

The table will, it is believed, give satisfactory results in the majority of cases. Nevertheless, the difficulties which are in the way of definite conclusions with respect to the considerations from which the table has been made are so great that the table must be regarded as giving approximate conclusions.

The particular kind of business which is to be carried on in a building upon which it shall be proposed to loan money is worthy of some notice ; for the wear and tear upon buildings, and consequently the durability of the buildings, will be very different for different branches of business. Thus, taking extreme cases, for the sake of a better illustration :

it will be evident that a retail jeweller will preserve the premises which he occupies in good condition, for his own benefit, if for no other reason ; while a dealer in heavy materials, such as iron pipes or plumbers' supplies, will necessarily leave his premises in a damaged condition.

The following described method, which will prove to be valuable when it shall be necessary for proposed mortgagees to arrive at final conclusions as to whether or not certain propositions for loans upon mortgages shall be accepted may be suggested :

The proposed mortgagee may imagine herself to be the owner of the premises upon which it shall be proposed to make the loan. She may then consider to what uses she may advantageously put the premises. If, in her imaginary position, she shall find herself to be unreasonably perplexed, she may well conclude not to make the proposed loan. If, on the other hand, she shall feel assured of advantageous uses to which the premises in question may be put without difficulty, she may estimate the price at which she will not be unwilling to transform her imaginary position as owner of the premises into a reality, and if the amount of the proposed loan shall not approach too nearly the estimated price, she may make the loan without fear of serious disappointment.

For the purposes of illustrating this method, and of arriving at safe conclusions with regard to the necessary excesses of estimated prices over the amounts of proposed loans, we may assume a case as follows : Suppose that it shall be proposed to loan the sum of ten thousand dollars, at five per cent., upon a certain piece of real estate, which, according to the claims of the owners, is worth twenty thousand dollars. For the purpose of estimating amounts of taxes, etc., the value which has been placed upon the premises by the owners may be accepted, for the reason that it will be, assuredly, not lower than the actual value. The calculation may then proceed in this manner : When it shall be necessary to foreclose the proposed mortgage, we may assume that the interest will be in arrears for a period of one year, or that

five hundred dollars will be due for interest ; that taxes on the premises (estimated at one per cent. per annum) will be in arrears for a period of two years, or four hundred dollars will be due for taxes ; that the expenses of foreclosure (estimated at high rates) will be five hundred dollars ; and that the condition of the premises will be such as to require an expenditure of five hundred dollars for repairs. If the mortgage shall be foreclosed, and the premises shall be bought in by the mortgagee, the cost of the premises, in good repair, and free and clear of incumbrances, will be $\$10,000 + \$500 + \$400 + \$500 + \$500 = \$11,900$. If, in this case, the proposed mortgagee shall be willing to purchase the premises at a price of, say, thirteen thousand dollars, she may conclude that the proposed loan may be safely made.

For the sake of arriving at a general rule with regard to the final conclusions which are now under consideration, we may say that, if the proposed mortgagee shall be willing to purchase the premises upon which it shall be proposed to make the loan at a price which shall exceed the amount of the proposed loan by thirty per cent., the loan should be a satisfactory one.

While a mortgage upon a piece of land, upon which is erected a building, will cover equally both the land and the building, and while, for the most practical purposes, the two are properly considered as together forming one piece of real estate and one security for the mortgage, yet there is a distinction between the two, which must not be neglected. The land is permanent, and, presuming, as a matter of course, that all necessary legal precautions have been taken, cannot fail to remain as a definite security for the mortgage. But not so the building. Fire may at any time entirely destroy it; extraordinary efforts of nature, such as lightning, cyclones, or earthquakes, may demolish it ; or extreme and wanton abuse may render it almost useless.

To protect mortgagees perfectly against possible injuries to their securities, as well as to protect the equities of the mortgagors in the buildings which are erected upon mortgaged premises, from any and all threatened dangers, is

practically an impossibility. But protection against fire will be afforded, to a more or less satisfactory extent, by the ordinary system of fire insurance; and certain precautions, which are to be embodied in the mortgage deeds, to which a sufficient reference will be made in the proper place, will to a certain extent remove other dangers.

In all cases where improved real estate shall be mortgaged, the mortgagors should be required to agree to keep the buildings upon the mortgaged premises insured against fire for the benefit of the mortgagees. Insurance policies which shall be issued in pursuance of such agreements should state the names of the mortgagees by including a clause like the following: "Loss, if any, payable to Mary J. Doe, mortgagee, as interest may appear."

Mortgagees must see to it that the amounts of the policies shall be sufficient; that the insurance companies shall be satisfactory; and that the descriptions of the mortgaged premises which are contained in the policies shall be correct.

An important clause which should be attached to the insurance policy of mortgaged premises is known as the *mortgagee clause*. It is an agreement on the part of the insurance company that the insurance, as to the interests of the mortgagee, shall not be invalidated by any act or neglect of the mortgagor or owner, provided the mortgagee shall pay the premiums if the mortgagor shall fail to do so, and provided the mortgagee shall notify the insurance company of any changes of ownership in the mortgaged premises, and of any increases of hazard which shall come to the knowledge of the mortgagee.

Care must also be taken by mortgagees that insurance policies shall not be allowed to expire without reinsurance through the carelessness of mortgagors. It is therefore well to make memoranda of the times of expiration of various insurance policies, and to notify mortgagors to renew the policies several days before the dates of expiration. The burden of refreshing the memory, from time to time, with regard to the times of expiration of insurance policies will be considerably lightened if policies shall be so arranged as to expire on or

near the regular interest-days ; for it is almost unnecessary to remark that in very few cases will the dates upon which interest shall fall due slip from the memories of mortgagees.

The values of mortgaged premises must also be kept up to the original values by insisting upon proper and necessary repairs, and upon the prompt payment of all taxes and assessments which may be charged against the premises. For the purpose of making the latter precaution effectual, regular searches for taxes and assessments should be made against the mortgaged premises every one, two, or three years, according to the characters of the securities and of the mortgagors.

The bonds (or promissory notes) which accompany mortgages, as evidences of the debts, are, in themselves, valid obligations, upon the strength of which the moneys which have been loaned may be recovered by means of ordinary lawsuits, provided the responsibilities of obligors shall be sufficient. Nevertheless, as has been sufficiently indicated in the preceding pages, such facts must not be at all relied upon in the consideration of the values of securities for mortgages, except that, as possible additional securities, bondsmen, who shall have the reputations and appearances of responsibility, should be, of course, preferred.

If the real estate upon which money has been loaned shall be an ample security, evidently it will make little difference to what extent the obligor, in a bond or note, shall be responsible ; and if the real estate shall not be a sufficient security, it may be considered a foregone conclusion that the mortgagee will suffer loss, so small is the proportion of obligors of this kind who will be found to be serviceable for the purpose of making good deficiencies. Still, since in theory the obligor is bound to pay the debt, and is liable for any deficiency which may remain after foreclosure and the sale of the mortgaged premises, it will be worth while that responsible obligors be chosen if the possibility of choice shall exist. The common practice is that the owner or owners of real estate upon which money shall be loaned (the mortgagor or mortgagors) alone shall execute the bond or note which accompanies the mortgage ; but if there shall be

a willingness on the part of mortgagors and their friends, mortgagees may well obtain bonds or notes upon which there shall be several obligors, thus increasing the chances of recovering possible deficiencies.

With regard to conditions which must be fulfilled in order that bondsmen shall be responsible, no definite rule can be given ; and this because, under the present tendencies of the laws, it seems that persons who are actually responsible to-day may easily become irresponsible on the morrow, and, it may be remarked, without any apparent diminution in the abilities of such persons to obtain still the necessities and also the luxuries of life. But the chances of the present and continuing responsibility of a proposed obligor will undoubtedly be much greater if the obligor shall be the owner of valuable unincumbered or lightly incumbered real estate.

In a large number of cases the owners of mortgaged premises and obligors on the accompanying bonds become different persons, because of one or more transfers of the mortgaged premises subject to the mortgages. In such cases the obligors on the bonds will still be liable for the debts, as if no transfers had been made, unless actually, or by construction of law, they shall be released from liability by some acts on the parts of the mortgagees. It will therefore be the part of wisdom in such cases to have no understandings or agreements with bondsmen which may be construed as considerations for their releases from the obligations of the bonds.

The actual cash value of a certain piece of real estate, upon which it is proposed to loan money, having been ascertained, by means of the considerations which have been explained in this chapter, the next question of importance will be, "how much money may be safely loaned upon the real estate"; or, in the form which this question will generally assume in practice, "will the value of the real estate, as ascertained, be sufficient for the protection of the stated amount which the owner of the premises shall wish to borrow?" And this question must lead back again to the margin of safety, which has been discussed in a general

manner in a previous chapter, and which will be recognized, without difficulty, as the subject to which we must now give particular attention, in the aspect of its special applicability to the subject of mortgages.

In the simplest manner of statement, the margin of safety, in the case of a mortgage upon real estate (the difference between the actual cash value of the mortgaged premises and the amount of the mortgage), must be such that the real estate will, under the disadvantages of a forced sale, and probably in a time of business depression, surely sell for an amount which will be sufficient to pay all prior charges which may exist against the real estate, the expenses of the foreclosure proceeding, and the amount of the mortgage with the interest which may be due upon it. The amounts of these various items will depend to a considerable extent upon the lenity which has been accorded the mortgagor in any particular case. Thus, if the mortgagee shall generously (or carelessly) allow the mortgagor to remain in possession of the mortgaged premises for a long time after default shall have been made in the payment of interest, the arrears of interest certainly, and the arrears of taxes and assessments probably, will be greater than if the mortgage shall be foreclosed shortly after the default. Therefore, if the margin of safety shall be small, the mortgagee must, for her own protection, allow the mortgagor but little leeway, with respect to such items of expense; while if, on the contrary, there shall be an ample margin of safety, it will be but ordinary generosity to allow to the mortgagor a reasonable time during which he may recover from temporary difficulties, and thus save his equity in the mortgaged premises, taking care, however, that the interest of the mortgagee shall not be actually placed in jeopardy.

We may suppose two examples, which will illustrate arithmetically the statements which have here been made:

First, suppose that the actual market value of certain mortgaged real estate shall be twenty thousand dollars, at the time of the first default in the payment of interest, and that the amount of the mortgage shall be seventeen thousand

dollars, at the rate of six per cent. interest. In this case, the first default in the payment of interest (payable, we may assume, semi-annually) will decrease the margin of safety by the amount of five hundred and ten dollars ; the first default in the payment of taxes will decrease the margin of safety further, by the amount of, say, two hundred and twenty-five dollars ; and the expenses of a foreclosure proceeding, if begun at once, will produce such a further reduction that the margin of safety will probably be less than two thousand dollars. Such a margin will evidently be too low to admit of a delay which will involve a further lessening of the necessary margin. The possibility of an unexpected assessment or an unfavorable foreclosure sale must urge the mortgagee to a strict enforcement of remedies, regardless of any reasonable disposition to act generously toward the owner of the premises.

Suppose now, for a second example, that the amount of a mortgage upon real estate having a value of twenty thousand dollars shall be ten thousand dollars at five per cent. interest. After a default in the payment of interest for an entire year, and the non-payment of taxes for a year, and making ample allowances for the expenses of foreclosure, the margin of safety will still be about nine thousand dollars ; if the mortgagor shall be unable to pay the interest and taxes during the whole of the second year, there will still be an ample margin, and the mortgagee may still consider the investment to be safe.

It seems to be necessary here to state that the rule of safety which is universally recognized among business persons, and which, in the majority of cases, will be strictly adhered to, will require that obligations of all kinds shall be promptly met, and that little or no lenity shall be allowed. The disposition to be generally indulgent toward debtors is, without doubt, one of the most dangerous of tendencies, and at the same time a disposition which will be, for the most part, but poorly appreciated. We must, therefore, insist upon reasonably prompt fulfilments of all business obligations, except in rare cases in which we can, without injury to our own

interests, be of actual benefit to others who shall be worthy of our generosity.

With regard to mortgages, perhaps as practical a general rule as can be propounded will be to allow from thirty to sixty days, after a default, to elapse before beginning foreclosure proceedings, taking care to give ample notice to mortgagors of the necessity of such action. Very often mortgages contain agreements to the effect that the mortgagees shall have the right to foreclose after defaults in the payment of interest or of taxes for a certain number of days—twenty days to sixty days commonly. In such cases, any lenity which will ordinarily be shown to mortgagors may be considered to have been provided for and specified by agreement, and a further extension of the time may very properly be limited to a few days.

Another important consideration, which ought not to be forgotten when forming conclusions as to how much lenity may safely be allowed to mortgagors in the matter of taxes and assessments, will be the fact that the final result of failures to pay taxes and assessments will be the sale of the mortgaged premises by the public authorities to satisfy these charges. The laws of the different States, with reference to the periods of time which are allowed to elapse between the confirmations of taxes and the sales of real estate for delinquent taxes, vary materially. In some of the States this period is limited to a few months, while in others it is extended to several years. The laws generally permit mortgagees to redeem mortgaged premises which have been sold for unpaid taxes or assessments by paying the taxes or assessments with certain penalties and the costs. But the safer, more convenient, and more economical way out of this difficulty will be to see to it that mortgagors shall pay taxes and assessments, which may be charged against mortgaged premises, in time to prevent the sale of the premises; or, if this cannot be done, to pay the taxes and assessments, and charge them against the mortgagors, thus avoiding the additional penalties and costs of redemption, and at the same time the inconveniences which will necessarily attend such proceedings.

The actual numerical amounts of the necessary margins of safety, as compared with the amounts of mortgages, or the proportions of the amounts of mortgages to the values of securities (commonly expressed in the form of a percentage) for the best general results, will not be capable of invariable statement, for the reason that there will be considerable differences of opinions among investors as to just what percentages may be safely loaned. The statutes of many of the States have fixed upon fifty per cent. of the actual values of real estate as the amounts which the law will permit savings banks and such institutions to loan upon bond and mortgage, and the general opinion among the more cautious investors has acquiesced in this proportion as perfectly safe and advantageous in all respects. But in many of the large cities of this country there has been, at different times, such an abundance of money to be loaned on mortgages that the tendency has been steadily to increase the proportions of the amounts loaned to the values of the real estate, or, in other words, to take somewhat greater risks, in order that quick investments may be made.

A general rule among the investors of a score of years ago was that, in times of depressed land values, fifty to sixty per cent. should be the proper ratio of a loan upon real estate to the value of the premises, and that this ratio, in times of inflated values, must be reduced to from forty to fifty per cent. At the present time, an owner of desirable real estate in the city of New York (or probably in certain other cities) will have little difficulty in obtaining a loan which will amount to from seventy to eighty per cent. of the value of the real estate, and this at the rate of five per cent. interest.

A brief consideration of this question will make clear the fact that elements which will have important effects upon the determination of the safe ratios of loans to the values of the real estate will be the general characters of the premises with regard to fluctuations in values and utility for the purposes of renting. In many of the large cities there are pieces of real estate which, because of their desirability for the purposes of business or of first-class residences, have maintained

and do maintain very nearly or quite uniform values, regardless of the condition of real estate values in general. It will be apparent at once that much larger proportional amounts may safely be loaned upon such securities than upon securities which will necessarily be subject to violent fluctuations in values. The question of stability of values is, therefore, a very important one, and proposed mortgagees, when fixing upon valuations of real estate which shall be intended to secure investments, must consider carefully whether the prices of such real estate which are common at the time of the valuations shall be higher or lower than the averages of considerable numbers of periods, both of depressed and of inflated values. In some cases, as has been suggested, the differences will be found to be immaterial, while in others, and a far greater number of cases, the variations in values will prove to be considerable, or even surprisingly great.

In ordinary city property, the regular fluctuations of real estate values will probably amount to twenty-five per cent. of the highest values ; in suburban real estate of exceptionally good character the variations may be as great as fifty per cent. of the highest values ; and in property which has been made the subject of heavy speculation and so-called land booms, the highest speculative prices may amount to many times the prices which may actually be obtained after the speculative excitements shall have subsided.

There are also certain kinds of real estate which, because of advantageous locations and other considerations which need not be referred to in this place, will, in the judgment of certain experienced and capable investors, certainly and greatly increase in values, and such shrewd investors may therefore be willing to loan upon securities of this kind amounts which will approach very closely to the actual values at the times of making the loans. But investments of this kind will depend for success solely upon either the correct judgment or the good fortune of investors ; they are, therefore, speculative and dangerous, and must be entirely avoided by investors who are possessed of ordinary degrees of caution.

It follows necessarily from the statements which have been made that the ratio of the amount which shall be loaned upon real estate to the actual value of the mortgaged premises is, indeed, the comprehensive consideration which goes finally to determine the quality of a mortgage. And it is therefore evident that a mortgage which shall amount to fifty per cent. of the value of the mortgaged real estate may be an unsafe one, while a mortgage upon the same real estate, amounting to twenty-five per cent. of the value of the security, may be in every respect first class, even though the particular kind of security may not be the best. Hence, it also appears that mortgages upon the poorest general kinds of real estate may be perfectly safe if the ratios of the amounts which shall be loaned to the values of the securities shall be sufficiently low.

It will be plain, moreover, that this ratio must depend largely upon the degree of possible fluctuation of values for a particular piece of real estate.

If there shall be no reasonable possibility of any fluctuation of values, a loan which shall be equal to seventy-five per cent. of the value of real estate may be perfectly safe. If, in another case, the possibility of fluctuation shall be fifty per cent. (that is, the lowest value will be equal to one half of the highest value), the relative amount which may be safely loaned upon the real estate must be much less than seventy-five per cent. of the highest value.

If the difficulties which are to be met with in making entirely satisfactory loans upon mortgages shall be sufficiently great to warrant a mathematical calculation of the chances which must be taken; or if, for other reasons, such a proceeding shall be desirable, the rule which will be developed by the conditions above mentioned must be that investors may safely loan upon real estate to the extent of from seventy to seventy-five per cent of the lowest values of the real estate, from which may easily be calculated the correct percentage upon the highest values. For example, if the value of certain real estate shall be ten thousand dollars, and there is no reasonable possibility of any fluctuation, seven thousand and

five hundred dollars may be loaned upon the real estate ; if the highest value shall be ten thousand dollars, and the possible fluctuation one half (that is, the lowest value will be five thousand dollars), the safe amount of the loan will be seventy-five per cent. of five thousand dollars, or, considering the probability that the lowest value will be a temporary one, forty per cent. of the highest value, that is, four thousand dollars ; and if the highest value of real estate shall be ten thousand dollars, and the possible fluctuation so great that the lowest value will be one fifth of the highest, or two thousand dollars, the correct amount of the loan will be reduced to seventy-five per cent. of two thousand dollars, or about fifteen per cent. of ten thousand dollars, that is, fifteen hundred dollars.

It is sincerely to be hoped that future mortgagees will not be compelled to resort to such methods of ascertaining the qualities of their investments, but rather, if increasing difficulties shall make the alternative necessary, that slight reductions in the rates of interest will be able to afford the necessary compensating elements.

The difficulties and delays which are often to be met with while seeking satisfactory mortgage-investments have given rise to a practice among certain corporations and companies which are engaged in extensive businesses in general real estate transactions of selling mortgages, and also of investing the money of their patrons in mortgages, with agreements to the effect that the corporations shall retain certain portions of the interests for compensation.

With regard to the former of these practices, it may be said that, while the familiar rule that mortgagees shall be put to no expense for the loaning of money, will indicate a theoretical impropriety in this method of paying bonuses for good bonds and mortgages; and while the general tendency of the practice will doubtless be to increase the premiums which will thus be put upon desirable mortgages, or to reduce the average rates of interest from such investments, nevertheless, if the characters of mortgages which are to be obtained in this manner shall be in all respects satisfactory, the

advisability of the practice will become a question of arithmetical calculation.

If, by means of this method, the payment of a bonus of one hundred and twenty-five dollars will obtain for an investor a first-class mortgage for twenty-five thousand dollars, at five and one half per cent. interest, and having five years yet to run, the calculated result will be that the first year's net interest will be at the rate of five per cent., and thereafter the interest will be at the rate of five and one half per cent. Such an investment will prove to be highly satisfactory. But if we suppose the rate of interest upon the twenty-five thousand dollar mortgage to be four and one half per cent., and the bonus which shall be demanded to be two hundred and fifty dollars, the investor will make a material gain by making the loan in the ordinary manner if, by so doing, a mortgage at the rate of four and three fourths per cent. interest can be obtained with a delay of six months' duration.

Another consideration, which must not be disregarded, if it shall be considered to the advantage of investors to make use of such methods of investing in mortgages, will be the means by which mortgagees are to be assured of good titles to the mortgaged premises. Investors must either be put to the expense of examinations of the titles by their own lawyers, or they must place reliance upon the representations or guaranties of the companies from which the mortgages shall be purchased ; and, since the former of these alternatives should evidently be preferred, the expenses of examinations of titles must form additional items in the calculations which are to determine the advisability of the transactions.

It must be remarked that the practice of selling mortgages for stipulated sums appears not yet to have become at all extensive. Certain corporations whose business it is to guarantee the titles to real estate, and also to loan money on mortgages, have up to the present time been willing to transfer mortgages to investors, and to guarantee the titles to the mortgaged premises, for the amounts of the mortgages and the accumulated amounts of interest, in order that they may reinvest the money in other mortgages, and receive therefor

their fees for examining the titles to the new pieces of land and their commissions for making the new loans. If investors shall first assure themselves of the values of the securities for mortgages which are to be obtained in this manner, the chief objection to the method will be that investors must either accept the guaranties of the title companies as sufficient assurances of the titles to their securities, or, at their own costs, employ lawyers for the purpose of having the titles examined.

A moment's reflection will be sufficient to condemn the practice of loaning money on mortgages through the agencies of companies which require for compensation certain percentages of the interests during the entire durations of the investments. Such transactions will practically compel mortgagees to accept as their agents, in cases where agents are not at all necessary, and during the whole lifetimes of the mortgages, the companies which have furnished the investments. Moreover, the fact that the companies must receive larger rates of interest than those which shall be received by the mortgagees may place the investors in the positions of those who are receiving low rates of interest, and at the same time are taking the risks which are incident to high rates of interest. The objection which has been noticed with regard to the titles to the securities will also be present in investments which shall be obtained in this manner.

Inasmuch as the numerous, and in some cases unavoidably abstruse, considerations which have been discussed in this chapter are made necessary, in part, by the probabilities that mortgagees will be forced to become the absolute owners of the properties which form the securities for the mortgages (which probabilities, for the sake of precaution, must be regarded as by no means remote), investors in mortgages may derive important advantages from a careful study of the chapter upon the subject of real estate, which follows the present chapter.

The general requisite for the safety of mortgages which remains to be discussed is that the requirements and precautions of the law shall be carefully complied with ; and,

although all the requirements of the law are presumably also precautions, it must be noticed that the actual requirements of the law do not include all the legal precautions which may be necessary. The legal precautions, then, which are actual requirements of the law,—that is, without which mortgages will be practically void,—are that the legal papers shall be drawn and executed according to the prescribed forms; that the entire proceedings shall be lawful in their natures (not usurious or in other respects fraudulent); and that the mortgages shall be recorded in the public offices which are provided for such purposes.

Concerning the first two of these requirements, it is necessary only to remark that the first may safely be left to the lawyers who must necessarily have the legal charge of such matters, and that the second will be provided against by the exercise of common and easily distinguishable honesty.

As far as the validity of agreements between mortgagors and mortgagees is concerned, the recording of mortgages is not a legal necessity. But, for the purpose of giving notice of the mortgages to all other parties, this proceeding is necessary, and the only one which is regularly provided by law. And since, without such public notice, mortgagees will not be protected by the laws against sales of the mortgaged premises to persons having no knowledge of the mortgages, or against subsequent mortgages which may be made to persons who shall be equally innocent in that respect, it is evident that the recording of mortgages is a proceeding of vital importance to mortgagees. In all cases, mortgages should be recorded without unnecessary delays, even of the shortest durations, after they have been executed by the proper parties; they are usually recorded by the lawyers of the mortgagees, in order to make sure that such an important requisite shall be properly attended to.

Since the bonds or notes which accompany mortgages are merely the written evidences of the debts which exist between the mortgagors and the mortgagees, and do not in themselves establish liens against the mortgaged real estate, they are not intended to be recorded, but should be carefully

preserved, during the lifetimes of the mortgages, among the important documents belonging to mortgagees.

The legal precautions which are necessary for the safety of the mortgages, although not actually required by the law to establish their validity, are that the bonds and mortgages shall express, in proper language, the intentions of the parties, and that they shall include all the necessary covenants and agreements which have been devised for the benefit of mortgagees. While it should be considered as a part of the duties of careful lawyers to suggest to mortgagees who may employ them all necessary precautions of this kind, and while investors must necessarily depend upon their lawyers for particular advice in such matters, it will not be without benefit to describe here as briefly as possible the principal parts and clauses which should make up carefully drawn bonds and mortgages :

The principal parts of a bond which accompanies a mortgage, or, as it is sometimes called, a real estate bond, are the *penalty*, the *condition*, and the *covenants*.

The penalty states that the obligor (by name) is held and firmly bound unto the obligee (also by name) in a sum which is usually double the actual amount of the indebtedness, to be paid to the obligee or to his or her heirs, executors, administrators, or assigns ; for which payment the obligor binds himself or herself and his or her heirs, executors, administrators, and assigns.

The condition of a bond states that, if the obligor or his or her heirs, executors, administrators, or assigns shall pay to the obligee, or to his or her heirs, executors, administrators, or assigns, a sum of money which is equal to the actual amount of the indebtedness, upon a certain date, with interest at a certain rate, and payable at certain times, the obligation shall be void ; otherwise to remain in full force.

The following covenants or agreements will be sufficient in all ordinary cases to furnish the necessary legal protection for the mortgagee :

(1) An agreement that if default shall be made in the payment of interest, taxes, or assessments, the principal sum,

with all arrears of interest, shall, at the option of the obligee, or his or her legal representatives or assigns, immediately become due, although the period limited in the bond for the payment of the principal may not have expired.

(2) An agreement that, if default shall be made in the payment of the principal sum, interest, taxes, or assessments, the obligee and his or her legal representatives or assigns shall have the right forthwith to take possession of the mortgaged premises and apply the rents, issues, and profits to the payment of the debt; and also that the obligee and his or her legal representatives and assigns shall have the right, after such default, to have appointed by the court a receiver, who shall take possession of the mortgaged premises pending foreclosure proceedings.

(3) An agreement to the effect that the obligor shall insure the mortgaged premises in approved insurance companies, and to an amount which shall be approved by the obligee, and that, in case of a failure to do so, the obligee may insure the premises and charge the expenses against the obligor as an additional lien upon the premises.

The covenants or agreements which have been described are generally considered to be sufficient for purposes of reasonable security, and make up what passes generally for an ample bond. But there is another agreement, not at all common in bonds and mortgages, which under certain conditions may be of very great importance. In the chapter on general principles of investment, the subject of the relative values of money, as affected by the general credit of the government which issues the money, and the standard to which the money shall be finally reducible, has been discussed at some length. It is evident that the conclusions which have been reached in that discussion will be applicable in their strictest senses to loans which are secured by bonds and mortgages. Therefore if, in the judgment of an investor, there shall be a reasonable possibility that the loan will be repaid in depreciated money, or that the interest will be paid in money of a lower value than the standard, an agreement should be included in the bond to the effect that the principal sum and

the interest shall be paid "in gold coin of the United States of America, of the present weight and fineness, or its just and full equivalent."

The principal features of the mortgage which is to accompany a bond such as has been described may be briefly described in the following manner :

The mortgage should properly name the parties, and state that the mortgagor is indebted to the mortgagee in a certain sum of money, secured to be paid by a certain bond, conditioned for the payment of the said sum, at the time, and with the interest, specified in the bond. There should be a clause conveying to the mortgagee and to his or her heirs and assigns forever the mortgaged premises, which should be carefully and accurately described. Next in order should come the proviso that if the mortgagor shall pay the sum mentioned in the condition of the bond, and the interest as provided in the condition of the bond, then the mortgage and the estate granted by it shall cease, determine, and be void. The mortgage should then contain the same agreements as the bond, and in addition, agreements that the mortgagor will forever warrant the title to the mortgaged premises, and will execute any other instruments which may be necessary for the further assurance of the title.

A mortgage may also contain a clause to the effect that the mortgagee may foreclose the mortgage if the mortgaged premises shall be allowed, by the mortgagor, to become dilapidated or ruinous in condition ; although such a clause is not very common, for the reason that, if correct conclusions with regard to the value of the mortgaged premises and of the margin of safety have been reached by the mortgagee, ample provisions will have been made for any damage to the mortgaged premises which may reasonably be apprehended.

The sale or transfer of the rights of a mortgagee in a bond and mortgage is called an *assignment* of the mortgage. The general effect of an assignment of a mortgage is to transfer to the assignee all the rights which the assignor had in the bond and mortgage before the assignment was made, and all the

rights in the bond and mortgage which the assignor would have had in the future, if the assignment had not been made. The legal instrument by which such a transfer is made, also called an assignment of mortgage, is a written instrument, signed, sealed, and acknowledged by the assignor, and recorded in the same manner as a mortgage.

An assignment of a mortgage should state that, for a good and valuable consideration, the party of the first part (the assignor) grants, bargains, assigns, etc., to the party of the second part (the assignee) the mortgage (carefully described by date, names of parties, and place and date of record), together with the bond therein described, and the money due or to grow due thereon, with the interest ; and that the assignor constitutes the assignee his or her attorney to act as the assignor might have acted if the assignment had not been made.

With regard to the relative safety of investments in mortgages, whether obtained by direct dealings with the mortgagors or by assignments from former mortgagees, if investors shall be assured concerning the titles to the premises, no practical distinction is to be made.

Mortgages upon real estate may be discharged or destroyed in three different ways : by *merger*, by the payment of the mortgage debts, or satisfaction of the mortgage, and by foreclosure. If a mortgagee shall purchase outright the mortgaged real estate, the mortgage will be destroyed ; or, as lawyers say, the mortgage will *merge* in the absolute ownership ; for it is absurd to suppose that persons may hold mortgages against themselves. But evidently the theory of merger must apply only to the particular mortgages of which the purchaser of the mortgaged premises was, before the purchase, the owner. Therefore if the mortgagee of a second or third mortgage shall purchase the mortgaged real estate, only the second or third mortgage will merge, and the purchaser will take the real estate subject to all other undischarged mortgages and liens.

When a mortgagor shall pay the debt for the security of which the bond and mortgage have been made, the mortgagee

must surrender to the mortgagor the bond and mortgage; and, for the purpose of discharging the mortgage upon the public records, a legal paper, which is called a *satisfaction*, or a *satisfaction-piece*, must be given to the mortgagor. A satisfaction-piece is a certificate, signed and acknowledged by the mortgagee, to the effect that the mortgage (described in the same manner as in an assignment of mortgage) is paid, and that the mortgagee consents that it be discharged of record. The mortgagor must then file the satisfaction-piece in the public office where the mortgage is recorded, and the mortgage will be accordingly discharged.

As has been already explained, the remedy of a mortgagee for the non-payment of interest, taxes, or the principal amount of a mortgage when due, is the foreclosure of the mortgage. The foreclosure of a mortgage is a legal proceeding of a technical and somewhat difficult character, varying somewhat in the different States. A general description of the proceeding, sufficiently explicit for the purposes of this work, may be given in the following manner :

A legal action, upon proper notice to the mortgagor and to other interested parties, is brought in the proper court, in which action all the facts concerning the bond, mortgage, and default are placed before the court, with a demand for judgment that the mortgagor and all subsequent lienors shall be barred and foreclosed of all rights in the mortgaged premises, and that the premises may be sold, according to law, for the payment of the principal debt, interest, and expenses.

The final result of a foreclosure proceeding is that the mortgaged premises will be sold at public auction for the benefit of the mortgagee. The mortgagee, either in person or by representation, must, without fail, be present at the sale of the mortgaged premises. If then no bids of amounts sufficient to pay the debt and the expenses shall be received, or if for any other reason the mortgagee shall be desirous of acquiring the property, it may be bid in and purchased by the mortgagee in the same manner as it may be by any other bidder. If the mortgaged premises shall sell at a price which

is insufficient for the payment of the charges against it, a judgment for the deficiency will be rendered by the court against the obligors on the bond. The effect of a foreclosure sale is to transfer (by the deed of the officer making the sale) the mortgaged premises to the purchaser free and clear of the mortgage which has been foreclosed and of all other mortgages and liens which are subsequent to the one which has been foreclosed.

These explanations will serve to illustrate plainly the advantages of first mortgages over second or subsequent mortgages ; for it is evident that at the sale resulting from the foreclosure of any of the mortgages which may be liens upon certain real estate, the mortgagee of the last mortgage must be prepared to bid in the premises for an amount which will be sufficient to satisfy the claims of the last mortgage, in addition to the claims of all the prior mortgages ; otherwise the last mortgage will be lost or "wiped out." Similarly, all mortgages which are subsequent to the one foreclosed, and for the payment of which the purchase price may be insufficient, will be wiped out by the foreclosure. In this manner it may be remarked that prior mortgages will be, to a certain extent, actually protected and benefited by the subsequent mortgages.

The fact that a bond and mortgage shall be due (that is, that the time which has been specified for the payment of the debt shall have arrived) is not at all a necessary reason for demanding the payment of the mortgage, and thus terminating the investment ; although it will give to the mortgagee the right to demand payment without regard to the wishes of the debtor, and similarly to the mortgagor the right to pay the debt and cancel the bond and mortgage. No rights of either party will in any way be prejudiced by allowing such a mortgage to remain indefinitely, without further agreement between the parties. And so it is that in many cases mortgages have continued for long periods after they have become due, the interest being, of course, regularly paid, and the other agreements being regularly fulfilled as if the mortgage were not due. The chief objection to such a proceeding is

that the mortgagor may at any time, and, without satisfactory notice, pay the debt, and thus put the mortgagee to the inconvenience which often follows an unexpected payment ; and likewise the mortgagee may, upon a day's notice, demand payment of the debt, and in default thereof begin foreclosure proceedings without delay. No such action will be at all probable among mortgagors and mortgagees who are possessed of even a common amount of generosity and good feeling toward their fellow-beings. A notice, in either case, of at least thirty days is usual, and this should be extended when it shall be necessary for the one party and at all convenient for the other. But in order to avoid the possibility of such difficulties, it is a common practice to extend the times for the payment of mortgages for definite and specified numbers of years by agreements between the mortgagors and the mortgagees.

An extension of a mortgage should be in writing, signed and sealed by the parties in the presence of witnesses. It may be written on the back of the bond, and should state that the time for the payment of the amount of the bond is, by consent of the parties, extended to a certain specified time, and that all other conditions and covenants which are contained in the bond and in the mortgage of even date are to remain in full force.

An orderly and systematic method of dealing with mortgagors, and of filing and preserving the various papers which appertain to investments in mortgages, will be found to be of great value, not only for the preventing of oversights which may result in serious inconvenience, if not in actual losses, but also for the purpose of facilitating the work which unavoidably attaches to such transactions. There is also a proper method of writing receipts and indorsements upon bonds, and this mortgagors are entitled to at the hands of mortgagees, although, generally speaking, they may not be in positions to demand it. If the mortgagor and the obligor in a bond shall be one and the same person, as is more often than otherwise the case, the receipts for interest should be written in the following manner :

BOSTON, MASS., Nov. 1, 1896.

Received of Mr. Richard Roe his check for two hundred and fifty dollars, for six months' interest on his bond bearing date May 1, 1885, to date (or to Nov. 1, 1896), the same to be indorsed on said bond.

\$250.⁰⁰/₁₀₀

MARY J. DOE.

If, by a sale of the mortgaged premises to Sarah Clark, Richard Roe, the mortgagor and obligor on the bond, shall have ceased to be the owner of the mortgaged premises, the receipts for interest, which is paid by Sarah Clark, may read in the following manner :

BOSTON, MASS., Nov. 1, 1897.

Received of Mrs. Sarah Clark her check for two hundred and fifty dollars, for six months' interest on the bond of Richard Roe bearing date May 1, 1885, to date (or to Nov. 1, 1897), same to be indorsed on said bond.

\$250.⁰⁰/₁₀₀

MARY J. DOE.

The bonds which accompany mortgages are sometimes printed with lines and spaces on the backs for the indorsements of the payments of interest. Perhaps more frequently the backs of bonds are without indorsement spaces. In either case, all payments of interest should be indorsed on the backs of the bonds as soon as the payments have been received. The indorsements should economize, as much as possible, the blank spaces within which they are to be written, and may read in this manner :

Recd. Nov. 1, 1896, two hundred and fifty dollars, six mos. int. on within bond to date (or to Nov. 1, 1896).

MARY J. DOE.

In some cases bonds and mortgages are drawn with agreements to the effect that the principal sums may be paid by instalments, or part payments, at different specified times. Agreements of this kind are not generally advantageous to

mortgagees, for the reasons that small sums, paid at periods which are separated by considerable intervals, will be difficult to invest properly, and such payments will increase considerably the labor of keeping accounts and of calculating and remembering the different amounts of interest. But bonds and mortgages of this kind will present no material difficulties other than those which have been mentioned ; they, therefore, may be used in cases where corresponding advantages, in the way of additional interest or improved securities, may be obtained, and in cases where investors shall desire to favor mortgagors with easier methods of paying the amounts of their indebtednesses. When, under such agreements, amounts of the principal sums shall be received from mortgagors, the following forms of receipts and indorsements on the bonds may be employed :

BOSTON, MASS., Nov. 1, 1896.

Received of Mr. Richard Roe his check for one thousand dollars, first payment (or second or third payment) on the principal of his bond (or the bond of William Clark), bearing date May 1, 1885, the same to be indorsed on said bond.

\$1000. ¹⁰⁰/₁₀₀

MARY J. DOE.

Recd. Jan. 1, 1896, one thousand dollars, first payment on principal of within bond.

MARY J. DOE.

Probably, in a majority of cases, investors will not desire to keep particular accounts of their mortgages in regular book-keepers' forms, trusting rather to their check-books and simple memoranda for information which may be required with respect to the mortgages. There are, nevertheless, decided advantages to be derived from careful and accurate accounts of such investments; moreover, such accounts will not require additional labor which will be seriously burdensome.

For the purposes of a mortgage-account, a special book, ruled as an ordinary account-book, is to be recommended.

It may be marked "Mortgage-account," or "Mortgage account-book."

The following, representing a page of a mortgage-account, will illustrate a method of keeping the account :

Mortgage on premises 1122 High St., New York City.

Dated May 1, 1894, \$10,000, 5 years, 5 %.

Bond of Richard Roe,
residing on the premises.

Dr.				Cr.			
1894.				1894.			
May 1, To mortgage...	\$10	000		Oct. 9, By Roe paid			
Oct. 1, " taxes.....		115		tax.....		115	
Nov. 1, " interest.....		250		Nov. 5, By check.....		250	
1895.				1895.			
Mar. 4, " assessment..	97	50		Apr. 5, " Roe paid			
May 1, " interest....	250			ass't.....		97	50
Oct. 1, " taxes.....		118		May 3, By check.....		250	
Nov. 1, " interest....		250		1896.			
1896.				May 15, " cost of pre-			
Jan. 6, " insurance ..	35			mis, at foreclosure			
May 1, " interest		250		sale	\$11	155	50
" 15, " expenses of							
foreclosure.....		502	50				
	\$11	868				\$11	868

This account gives the items in a case in which the mortgagee has been compelled to foreclose the mortgage, and to buy in the mortgaged premises at the foreclosure sale ; and the last entry on the credit side gives the entire cost of the premises. The account which has been given charges the amounts of taxes as they have become due upon the premises ; these, and all items of a similar nature which have been paid by the mortgagor, may be omitted from the mortgage-account without serious consequences, if the mortgagee shall prefer to do so. If interest on the arrears of interest and on the expenses which have been paid by the mortgagee shall be allowed, the legal interest should be charged upon the debit side of the account, and balanced upon the credit side by including it in the cost of the premises.

In the case where all the obligations of a mortgagor shall have been promptly met, and the mortgage debt shall be properly paid at maturity without recourse to foreclosure proceedings, the account will be much simplified, the last and balancing entry upon the credit side being merely the amount of the mortgage debt which shall have been paid by the mortgagor.

If the mortgaged premises shall be purchased by a third party at the foreclosure sale, the balancing entry upon the credit side of the account will be the amount realized at the sale, and applicable to the payment of the mortgage, with the memorandum "by amt. recd. from foreclosure sale."

In a similar manner, if a mortgage shall be assigned to a third party, the balancing entry will be the amount of the consideration of the assignment, and the memorandum, "by amt. recd. for assgmt. to Sarah Clark."

If, unfortunately, there shall be a deficiency after the foreclosure sale, and a judgment against the debtor for the same, the amount which shall be realized at the sale, or paid for the mortgaged premises, should be entered on the credit side of the account, and the balancing entry will be the amount of the judgment, with the memorandum "to balance for which judgment was entered," or "to balance, deficiency-judgment." If the judgment shall afterward be collected, the account may be balanced and closed by charging the balance or deficiency on the debit side and by entering the same amount as "judgment collected" on the credit side. If, on the contrary, the judgment for the deficiency shall never be collected, which is much more apt to be the case, the balance will show the amount of the loss, which must be added to the amount paid for the mortgaged premises, to give the entire cost.

For the purpose of conveniently filing and keeping together the papers relating to investments in mortgages, substantial paper filing-envelopes of from one half of an inch to three fourths of an inch in thickness are to be recommended. All papers relating to the same mortgage may be placed in one envelope, and a brief designation of the mortgage and of

the papers should be written on the envelope. Thus, for example: Johnson mortgage, \$10,000, May 1, 1894, premises 1122 High St., N. Y. City. Bond, Mortgage, Ins. Policy.

The statements and considerations which are thus far contained in the present chapter have been confined to mortgages upon real estate securities, for the reason that such mortgages are of far greater importance and advantage than those of any other descriptions. But it must not be supposed that real estate is the only kind of property which may lawfully be made the subject of a mortgage transaction. Almost all kinds of real and personal property may be lawfully mortgaged, the dividing line of distinction being between all kinds of property which are capable of absolute sale, which may be mortgaged, and mere possibilities of ownership or expectancies, which may not be mortgaged. Hence, not only the various interests in real estate other than absolute ownerships (such as an ownership for life, a leasehold, a judgment lien, or a mortgage itself) may be mortgaged, but also furniture, jewelry, clothing, horses, carriages,—in short, all kinds of personal belongings and chattels may be made the securities for mortgages.

Mortgages on goods and chattels, or *chattel mortgages*, may be classed as among the most common methods of securing, or of attempting to secure, loans, more often than otherwise of small amounts. Special laws have been enacted, providing methods of recording or filing chattel mortgages, and purporting to provide against fraud by requiring that copies of the mortgages, certified by the mortgagees, shall be filed, at certain specified periods, and also by making removals of the mortgaged chattels, without the consents of the mortgagees, punishable offences.

Chattel mortgages usually are not accompanied by bonds, notes, or other evidences of the debts, statements of the debts and agreements to pay the same, or any deficiencies which may remain after sales of the mortgaged chattels, being included in the mortgages.

With regard to the value of all kinds of personal property as securities for loans, and as compared with real estate

securities, two principal and very important differences will appear : first, real estate is actually permanent, and cannot be easily lost, stolen, hidden, or destroyed, while personal property, from its very nature, may be moved from place to place, concealed, hidden, or destroyed at the will of the persons having the possession ; and, secondly, the title to real estate is, generally speaking, a matter of public record, and the proof of title is usually a matter of documentary evidence, while the ownership of personal property is often extremely uncertain, and the proof of ownership may be a proceeding of great difficulty.

These objections to personal property as safe securities for mortgage-investments are of vital consequence, since they may render the titles to the securities uncertain, and may place the securities themselves beyond the control of investors. For these reasons alone, mortgages upon chattel securities will come far short of the requirements which we have found to be necessary for the safety of investments, and accordingly they must be placed among the dangerous investments which are to be at all times avoided.

In addition to the signal failure of personal property to meet the necessary requirements in the respects which have been mentioned, is the objection that the values of articles of personal property in general will be subject to extreme fluctuations, and, almost invariably, to steady and continual depreciations in values as their ages shall increase. The conditions of the chattels, which may be good on one day and bad on the next ; the state of the market ; the vagaries of taste, fashion, and popular demand—these and other conditions and circumstances affect in so great a degree the values of nearly all articles of personal property that, in many instances, it will be practically impossible to fix upon certain and definite values, without which investments will be well nigh worthless.

Notwithstanding the general disadvantages of personal property as securities for investments, there is one form of personal security which, under proper and perhaps exceptional conditions, and although involving considerable

difficulties, is thought by many investors to be capable of furnishing satisfactory investments ; that is good and substantial buildings, standing upon leased ground, the buildings belonging to the tenants and the ground to the landlords. By way of illustration, it is evident that the owner of a building, the actual cost of constructing which shall be one hundred thousand dollars, and which shall stand upon valuable land, under a ground-lease, which has many years yet to run, will have little difficulty in borrowing a considerable sum of money by mortgaging the building. Nor is it difficult to believe that, under favorable conditions, such a building may prove to be an adequate security for a loan of considerable magnitude.

In cases of this kind the general objections to personal securities, on the grounds of uncertainty of titles, capability of removal, and susceptibility to extraordinary fluctuations, will be, either wholly or to a great extent, removed ; and, although actually personal property, securities of this kind will partake to such an extent of the nature of real estate that they will derive apparent corresponding advantages from the similarity.

There are, however, difficulties and possibilities of loss which are peculiar to the complicated characters of loans upon leasehold securities, and many of which, in ordinary mortgages upon real estate, it will not be necessary to guard against.

As a first precaution, the title to the land upon which a building, which it is proposed to mortgage, shall stand must be carefully examined, since it is evident that the interest of the lessor in the land itself will be the foundation upon which the value of the security will actually rest. Evidently there may be liens and incumbrances against the land which, being prior to the lease, will also be incumbrances upon the building.

The lease of the land, with all its complicated terms and conditions, will require a very careful examination, for upon it will depend directly the value of the security.

If a ground-lease shall provide that, at the expiration of

the term, the buildings which have been erected upon the land shall revert, free and clear of all incumbrances, to the owners of the land, evidently the buildings will be of little, or at least of uncertain, value as mortgage-securities. If, in a ground-lease, the landlord shall covenant to purchase the building at the expiration of the lease, at an appraised value, then to be ascertained, the value of the building for the purposes in question will be more clearly defined. And if, in a ground-lease, the agreement of the landlord shall be to the effect that he will purchase the building, at the expiration of the term, at a specified price, the value of the buildings for the purposes of a mortgage will be still more clearly defined. In the first case, the value of the security will depend almost altogether upon the period of time remaining unexpired of the term of the lease, gradually becoming less as the time of expiration shall approach, and finally becoming reduced to nothing at all. In the second case, the correct estimation of the probable depreciation in the value of the building, or of the final value of the building at the expiration of the lease, will perhaps prove to be a problem which is too uncertain for satisfactory solution.

The terms of forfeiture ; the agreements concerning the payments of rents, taxes, and insurance ; stipulations for extensions or renewals of the lease, etc., must not be disregarded. The terms of the mortgage must also be such as to afford the mortgagee a practical means of compelling the tenant (the mortgagor) to fulfil promptly his agreements with the landlord.

Since, in mortgages upon leaseholds, the securities will be capable of complete destruction, insurance policies for the benefit of the mortgagees will be of the greatest importance ; excepting the personal responsibilities of the mortgagors, and any additional values which may have accrued to the leaseholds from enhancements in the values of the real estate, the insurance policies, in certain contingencies, will be the only securities to which the mortgagees may look for the payment of the funds which have been invested.

Among the necessary precautions which must be taken, if

investors shall be willing to loan money upon the security of leaseholds, may be mentioned the careful watching of the mortgagor's payments of rents, taxes, etc., lest dispossession proceedings or sales for taxes may involve investors in serious difficulties ; the obtaining of the consent of the landlords to the mortgage transactions, and agreements on the parts of the landlords to notify the mortgagees of any defaults on the parts of the tenants ; and a proper care in the identification of the mortgagors as tenants who shall have the legal right to mortgage the leaseholds.

Among certain large and active investors, the loaning of money upon first-class leaseholds is regarded as safe and desirable ; according to credible reports, single mortgages to the amount of one hundred thousand dollars have been placed in this manner in the city of New York.

For such reasons, and because of their peculiar position among mortgages upon personal property, it has been deemed proper that mortgages upon leasehold securities should be explained, in somewhat of detail, in this work. But, with all the precautions which may be suggested, and with all the talents of judgment which, even in exceptional cases, may be exercised, it must not be doubted that the complications and difficulties which will surely be involved in transactions of this kind ought to place them beyond the consideration of truly careful investors. And if the difficulties which have been suggested shall not be sufficient to remove such loans from the lists of possible investments, a recourse to the general rules of investment, which have so often received our consideration, will not fail to determine the exact position of such transactions in the broad field of investment. Thus leasehold mortgages will not, strictly speaking, furnish real and ample securities, for the securities may be practically destroyed by fire and the failure of insurance companies, and the values of the securities will be in most cases too uncertain to be ample. Nor, strictly speaking, will the securities be within the control of the investors ; for the ultimate securities (the lands) cannot be reduced to the possession of the investors. Indeed, the direct securities (the buildings and leases)

cannot be reduced to the possession of the investors except by assuming the duties of paying the ground-rents and of performing, for the tenants, the remaining covenants between owners of the lands and the tenants.

In concluding the discussion of the subject of mortgages, it must be remarked that, search and investigate as diligently as we may, no form of loan-investment which, in points of safety, simplicity, certainty of income, and freedom from the demands of an arduous and irksome vigilance, will be found to be equal to loans which are secured by satisfactory bonds and mortgages upon real estate will be found. And further, it may be said that investors who, stemming the current of modern popular tendency towards supposed newly discovered methods, and casting quickly to one side the temptations and the fascinations of glib promoters, who claim to have opened the impossible royal road to fortune, shall confine their loan-investments steadily to mortgages upon real estate, will not fail to reap the substantial benefits which are to be obtained only by a manner of proceeding which shall be at once uniform, systematic, judicious, and cautious.





CHAPTER IX

REAL PROPERTY

BY the term *real property*, or, in the common, although technically improper, language of the masses, *real estate*, we mean land and that which is attached to it—in short, and with sufficient accuracy for the purposes of this work, *land and buildings*.

Among all tangible things to which the human being may bear a definite relationship, foremost in importance must be regarded land,—the substantial, unchangeable portions of the earth,—the soil. Upon it our infant footsteps rest ; from the earliest infancy to the last hours of infirmity and old age it furnishes us with food, clothing, and shelter, unfailingly and bounteously ; and at last it provides for us a gentle resting-place within its generous bosom.

In the ages which have passed, the scourges of war, pestilence, fire, famine, and flood have passed over the earth. Humanity has withered and disappeared before these fearful ravages. The mightiest and most substantial works of man have been obliterated, leaving scarcely traces behind them. Cities, empires, and races of people have been buried in oblivion. But the solid land—the soil—remains, humanity's perfect ideal of that which is immovable, indestructible, imperishable.

Small wonder, then, that, of all possible earthly possessions which men unceasingly strive for and hold dear, land only is called by them *real property*. And therefore, also, it is that individual ownership of land, for which the accumulated wisdom of centuries has found it necessary to provide

the means and the protection, is, above all other kinds and descriptions of actual possessions, greatly to be desired.

The human being is definitely located and identified by his possession of land. And further, man is impelled to good citizenship, to patriotism, to integrity, to love, to devotion, and to inestimable happiness by his sense of supreme security in the land upon which rests his own home—that dearest of all places, “whence he will not depart, if nothing calls him away; whence, if he has departed, he seems to be a wanderer, and, if he returns, he ceases to wander.”

Reflections such as these should bring forcibly to the mind the surpassing importance of the laws which establish and maintain the citizen's sure title to his land. Indeed, it is for reasons of no ordinary consequence that, in the mother-country, from which we of America have derived the blessings of the common law, the inviolable title-deeds to the land have long been known as the “common assurances of England.”

There must be no wavering, no questioning, no theorizing with respect to these vitally important facts. The proposition, instantly and universally accepted, must be simply this: given a title to land, honestly acquired and lawfully employed,—and that title must be sacred,—the citizen must stake his life in its defence. For of what use is government if the honest citizen shall not know what *real* property is his own? What shall signify the flag which floats only over government possessions? Of what benefit are armies and navies, if there shall be no homes?

And so, all sorts of community plans, all theories of anarchy, socialism, and the like, and all schemes for a special distribution of land, or for special methods for the taxation of land, must be promptly put down at any cost. They are, one and all, essentially portentous, and must be allowed no consideration, no liberty, not even life.

That nation is surely perishing wherein these forces of lawlessness and disorder, all combined, may assail, except with certain futility, even the most insignificant of land titles—wherein they are able, for a single moment, to shake

the mountain wood-chopper's just title to his little rocky home, or the fisherman's honest claim to his cabin and his bit of ocean sand.

There are many different kinds of interests in lands, some simple, others intricate and difficult to understand. It appears to be entirely unnecessary that all such interests shall be explained in a work of this description ; but it will be beneficial to define, simply and briefly, the common kinds of ownership, or partial ownership, of land with which the business woman ought to be familiar.

The word "estate," as applied to land, properly means *interest or kind of ownership*. We therefore speak of a tenant's interest in the leased land as a *leasehold estate*, and of an ownership of land for life as a *life estate*.

The greatest estate which may be had in land is an absolute ownership, or such an ownership that the land may be sold or devised by will, or will pass to the heirs by inheritance. Such an estate, in England, where there are other estates to distinguish, is called an estate *in fee simple*, or *in fee simple absolute*, and in the United States generally an estate *in fee*, or an *absolute estate*.

The second greatest estate in land is an *estate for life* ; that is, an ownership of land which a person may have during his or her lifetime, the land, after the death of the owner for life (or *tenant for life*), to pass to other persons. The estate of the last mentioned persons is called an estate *in remainder*, because it is the part which remains of the absolute estate, after taking out the estate for life. The common forms of estates for life are the estate *in dower*, which is the life estate which a widow has in one third of the real property owned by her husband at the time of his death ; the estate *by curtesy*, which is the life estate which a husband has in all the real property owned by his wife at the time of her death, provided the wife shall not have devised the land by will, and provided a child shall have been born alive to the husband and wife ; and an estate for life, which comes to a person, not by act of the law (as dower or curtesy), but by deed or by will.

Estates for years are all estates in land which expire or terminate at fixed periods, as the estate of the tenant to whom land shall be leased for a certain definite period. The estate of the landlord in the leased land, and which will *revert* to him after the termination of the lease, is called an estate *in reversion*.

The rule of *merger*, with regard to mortgages, has been referred to in the preceding chapter. It may be remarked here that whenever two estates in the same land shall come to the same person, without any intervening estate, the smaller estate will be swallowed up by, or *merged* into, the greater estate. Thus, if a tenant for life shall purchase the estate in fee, the estate for life will be merged in the greater estate in fee, for a man cannot be his own tenant. So, if a tenant for years shall acquire an estate for life in the same land, the estate for years will merge and disappear; for, in law, the estate for life is the greater estate, although the smaller estate may be for a thousand years. But if a tenant for years shall purchase the estate in fee, and a life estate belonging to a third party shall exist upon the land, the merging of the estate for years in the estate in fee (or, in this case, the estate in remainder) will be prevented by the intervening estate for life, and the owner of the estate in fee will have to pay rent to the life tenant.

With regard to the number of owners or tenants of land who shall have the same estate in the same land, estates may be *in severalty*, where one person holds the estate in his or her own separate right; *in common*, where there are several owners, each of which shall have a separate but undivided interest, which, if the estate be in fee, may be devised by will, or may pass by inheritance to the heirs; or *in joint-tenancy*, where there are several owners having such interests in the land that, upon the death of one the interest of the deceased will pass to the remaining owners, all the interests finally passing to the last survivor. Of the last two kinds, estates in common are generally presumed to exist wherever there are several owners of the same land, unless an estate in joint-tenancy shall have been expressly provided for in

the deed or will which creates the estate. Estates in joint-tenancy are comparatively rare in the United States, and are not all favored by the laws of the several States.

The *title* (or the means by which a person has rightful possession) to real property may be acquired in several ways : by occupation, as where one shall take and claim the possession of wild land, the property of nobody; by adverse possession, where one shall hold possession of another's land in spite of the true owner for a certain number of years, which has been prescribed by law as sufficient to give a good title to the squatter; by devise, where real property shall be given to a person by will; by descent, where real property shall descend to the heirs-at-law; and by the common method of conveyance.

Properly speaking, a *deed* is any contract which shall be sealed and delivered by the parties. Hence, bonds, mortgages, leases, releases, and conveyances are all deeds; but, by common usage in the United States, the word has come commonly to signify only the conveyance or instrument by which real property is conveyed.

The legal requisites for the validity of deeds are: competent parties, or parties who by law are considered competent, to make contracts—of proper age and sufficient understanding; proper subject-matters; legally sufficient considerations; writings upon paper or parchment; proper legal forms; proper knowledge of the contents by the parties; signing and sealing by the proper parties; proper attestations, and delivery.

The proper and orderly parts which form a deed are: the *premises*, which states the names and other designations of the parties, and describes the property which is affected; the *habendum*, which describes the estate which is conveyed by the deed—"To have and to hold the said premises unto the said party of the second part, and his heirs and assigns forever," or "To have and to hold, etc., for and during his natural life," or "for and during the term of ten years"; the *reddendum*, in which any reservations to the grantor (such as rent) are stated; the *conditions*, or the clauses which

may provide for the defeating, upon certain contingencies, of the estate granted, such as the condition of payment in a mortgage ; the *covenants*, or special agreements between the parties ; and the *conclusion*.

It will be evident that all deeds will not necessarily contain all of the parts which have been mentioned, since some of them will apply only under special circumstances. For example, the ordinary deed of conveyance has neither *reddendum* nor *conditions*, because, ordinarily, nothing is reserved to the grantor, and the premises are sold to the grantee absolutely, without conditions ; in a lease, the rent which is reserved to the lessor being of principal importance, the *reddendum* will, of course, be included.

In a general manner, it may be said that deeds of conveyance are of three kinds : the *bargain and sale* deed, which simply sells the land to the purchaser without covenants ; the *quit-claim* deed, which only gives to the grantee any claims to title which the grantor may have had in the land ; and the *full-covenant warranty* deed, which contains all the ordinary covenants for the protection of the title of the purchaser.

Full-covenant warranty deeds should be in all cases demanded, except when special circumstances, which should seldom arise, shall make other arrangements necessary. They are the only safe and reliable conveyances which will bind the grantors to make good the titles ; and a refusal on the part of a grantor, in a particular case, to give such a deed should generally, unless satisfactorily explained, cast some suspicion upon his title.

There is some variation in the forms of full-covenant deeds which are common in the different States ; but the covenants which are most commonly contained in such deeds are the *covenant of seizin* (rightful possession), and right to convey, by which a grantor promises that at the time of the conveyance he is possessed of a good and indefeasible estate in fee-simple in the premises, and that he has full power and lawful authority to sell the premises ; the *covenant against incumbrances*, which is to the effect that the premises granted

are free and clear of all former grants and incumbrances ; and the *covenant of warranty*, which is a promise, on the part of the grantor, that he and his heirs will forever warrant and defend the title to the premises.

In addition to these covenants, there are two which are generally included in deeds of conveyance in the Eastern and Middle States, and which ought to form parts of all properly drawn full covenant deeds. They are the *covenant of quiet enjoyment*, by which the grantor promises that the grantee and his heirs may, at all times, peaceably and quietly use and enjoy the premises granted without the molestation of any person lawfully claiming the same ; and the *covenant of further assurance*, to the effect that the grantor, his heirs, and all other persons deriving any interests in the premises through them, will furnish any other and further conveyances or assurances of title which the grantee or his heirs or assigns may reasonably require.

It appears not to be generally desirable that business women shall undertake considerable comprehensions of purely legal matters, lest they may become involved in the mysteries which lead to pettifoggery or to litigiousness. But an understanding, sufficient to admit of at least a casual application of the simple principles which have been explained in this chapter, will not fail to be of real advantage. It will not be necessary for business women to be familiar with the subtle, legal reasons which underlie the apparently verbose covenants contained in deeds ; but it will often be of great benefit to them if, when reading deeds which are about to be delivered to them, they shall be able to assure themselves that the covenants, which are necessary for their protection, have not been altogether omitted.

Land, being the original fountain-head of all production, must necessarily be the original source of all income, and as such a source of income, or, in other words, as the security for certain forms of investment, it may well be expected to fulfil to an exceptional degree all the requirements of the rules of investment. Without giving here the details of such a proceeding, because of its simplicity and the ample

illustration of it which has been given in the preceding pages of this work, it may be remarked that an examination of the general rules of investment, as applied to the ownership of real property, will at once result in a full realization of such natural expectations.

No other method of investment has ever been able so completely to respond to the most exacting requirements in this respect as does real property which is owned and controlled by the single investor.

A minute comparison between real property, which is owned by investor, and mortgages upon real property, which are considered by many persons to be superior to all other forms of investment, will result rather in favor of, than to the disparagement of, the former. For the ownership of real estate will do away with the possibilities of failures of foreclosure proceedings, which, however remote and improbable, are at least possible sources of danger to the safest mortgages. So, also, the fact that the older the investor's title to real property shall become, the firmer and better it will become (all flaws and imperfections being capable of obliteration by the mere lapse of time), well accords with the permanent and substantial character of the security. The theory that it will be a simpler matter to turn mortgages quickly into money than real property which is owned outright will have but little weight with the true investor ; for if an investment shall be in all respects a satisfactory one — and for the purposes of general comparison, this must be presumed to be the case — there will be, generally speaking, no desire, on the part of the investor, for such a transformation. And further it may be assumed, with every appearance of reason, that, if a mortgage upon real property shall have at all times a market value, quickly to be realized, similar qualities must attach to the land itself, which is the source and reason of the value of the mortgage. Indeed, the facts that investments in mortgages may be of much shorter durations than mortgagees shall desire, and that such investments may be terminated with scant notices to the mortgagees, will constitute arguments which will appeal with considerable force to investors,

and which will again result to the advantage of direct ownership of real property. The remaining argument — that personal property, even if the particular kind shall be by law taxable, may, by the oversight of or the deceiving of the tax officials, escape taxation, while real property will not be capable of concealment from the eyes of the assessors—should not be considered as worthy of notice, since it belongs only to investors whose intentions are fraudulent and dishonest.

The direct ownership of real property may, therefore, be considered to be the most advantageous general form of investment.

But it must be remarked that what is undoubtedly true in general may be precisely the contrary in special cases ; that is, there are special conditions which must be fulfilled before special investments in real property may be brought to the maximum standard of the general rule.

There are many kinds of real property, varying greatly in all essential respects, — from the valuable business lot, upon which may stand a twenty-story building of the most expensive character, to the practically worthless swamp-lands and barren, inaccessible mountain-lands which exist in almost all countries. Since the possession of the former kind will be practically impossible to the majority of investors, and since the possession of the latter kinds will be undesirable to all investors, it is evident that somewhere between these limits must lie the various kinds of real property to which the attention of investors in general must be chiefly directed.

There are two general purposes for which mankind seeks to own and control real property : first, that the real property may furnish homes within which to dwell, and second that the real property may furnish incomes with which to meet the expenses of living. In a broader sense, the former purpose may be considered to be included in the latter, since every ambitious person must either own a home or hire one, and the ownership of a home must be presumed to add to the income by the saving of rent and other expenses which are incident to the life of a lessee.

With regard to the former of these purposes, the first question (a question which is of real importance, and upon which there is by no means a uniformity of opinion) must be, whether or not it will be of advantage to investors generally to own their own homes, and, if so, homes of what kinds and descriptions. Whether it will be more profitable pecuniarily, and more beneficial in other important respects, to be the absolute owners of homes, or to hire homes of other owners; and, if the former plan shall be decided upon, whether homes shall be located in large cities, in small cities, in suburban villages, or in purely rural districts; and whether homes shall be luxurious and costly, fashionable, moderate, or plain and simple—these questions, and others of like natures, have at times engrossed the attentions of nearly every prosperous citizen, often to be decided in such a manner as to cause serious future regrets and inconvenience.

From the point of view of actual pecuniary benefit, the general rule appears to be that the ownership of a home possesses advantages over all other methods of providing this necessity; for it is to be presumed that no landlord will rent a house at a rental which shall be insufficient to pay all necessary expenses—interest on the money invested, taxes, repairs, insurance, and sinking fund—and, if possible, an additional profit, unless the particular premises shall happen to be so undesirable that the landlord will be forced to accept a low rental, while he endeavors diligently to “unload” his bad bargain upon some unsuspecting or inexperienced person. The direct and indirect expenses which are necessitated by frequent changes of residence, the possibilities that rentals may be increased at times which may be most inconvenient for tenants, the probabilities of unpleasant and time-consuming discussions with landlords or their agents concerning repairs and improvements, and the necessity of regularly providing the monthly or quarterly rents, without regard to the inconveniences which it may cause, are considerations upon which tenants must, indeed, at certain times, look with apprehension and alarm; while the tranquil home owner may generally, if necessary, postpone all house

expenses, save the comparatively small one of taxes, until more convenient times.

When considered from the standpoints of dignity, solidity of reputation, refined surroundings, comfort, society, and the numerous other benefits which are undoubtedly to be derived from permanence of location, the comparison cannot fail to favor the ownership of homes ; for in all these particulars the first place, by common consent, is uniformly accorded to those who, for many years, have been fortunate enough, and at the same time sagacious enough, to enjoy the blessings of homes which they may, with pardonable pride, call entirely their own.

A common objection which has been offered to the owning of homes, is the fact that it will tend to confine the owners to residence in the localities where the homes shall be situated. In certain cases this objection may be real and tenable, while in others it will prove to be entirely unimportant. A military man or a sailor may, perhaps, wisely choose not to own a home, because his occupation may require that he, and preferably his family, shall reside at different times in different places. The difficulty of disposing of a home upon advantageous terms, or the alternative of frequent separations from family, may cause such a man to prefer the hired home ; although often, in point of fact, he will insist upon his own home, notwithstanding these objections. Similarly, it has been asserted that a mechanic, who shall be dependent upon his trade for a living, should not own a home, for the reason that he ought to be at all times free to move from one locality to another, as may be most advantageous for him, on account of his trade. If an artisan's home shall be wisely chosen with respect to location, as well as in other important respects, it will indeed be difficult to discover good reasons why he should have extraordinary trouble in selling or renting it, if it shall become necessary or desirable for him to change the location of his residence ; and it is apparently certain that for such a person the ownership of a home which has been badly selected—for example, in a small village which is entirely supported by a

single industry—may result in a serious loss. Thus, it appears that the advisability of owning homes, even in the exceptional cases which have been cited for the purposes of arguments which are unfavorable to such ownership, will depend, not upon the correctness of the general principle, but upon the wisdom and the discretion with which the selection of homes has been attended.

For such persons as may be able to live upon their incomes from investments, and for such as may, for other reasons, be in positions to choose their places of residence, the advantages of owning homes must be generally admitted; and the question next arising will be concerning the considerations which ought to be made use of when selecting homes.

To persons who may be possessed of large incomes and of ample fortunes, the question of the selection of homes will become principally one of personal preference. Such persons may reside, during the winter months, in costly city houses, and during the summer months in scarcely less elegant country homes, among the mountains, by the seashore, or elsewhere, according to their individual tastes. But to persons of more moderate means (and natural prudence appears to suggest also to persons of large wealth), the selection of homes should be accompanied by careful considerations of all conditions which may affect the homes, not only as desirable places of residence, but, to a certain limited extent, as investments in real estate.

It may be said, however, that, if extravagance of any description on the part of wealthy investors shall be pardonable, it must be that kind of extravagance the results of which will be beautiful and costly homes, wherein may be found the comforts and proper luxuries which will lead to improvement, cultivation, and refinement.

For the purposes of general comparisons, homes may be divided, with reference to location, into three classes: first, city homes, by which we mean homes which are situated in large cities, and which have all the regular characteristics pertaining to such homes; second, semi-rural homes, or homes which are located in large villages or small cities;

and, third, rural homes, that is homes which are situated in small villages or at considerable distances from cities and villages.

With regard to the cost of homes, each of the three classes which have been mentioned may be divided into three classes, namely : costly homes, moderate homes, and simple homes, by which terms we mean homes which shall be costly, moderate, or simple as compared with the average cost of homes in the same classes with reference to location.

In the selection of homes, the necessary considerations may be very differently viewed by different persons ; a consideration which to one person under certain circumstances will be of the greatest importance, to another person, under different circumstances, may be of very little consequence. Thus, one person may establish a home upon a purely pecuniary basis—as an investment or speculation, to be maintained, sold, exchanged, or leased, according as will be most advantageous from a pecuniary standpoint ; another person may desire chiefly the advantages of society and amusement, and the home will be chosen with these objects as the principal considerations ; another may regard the question of general healthfulness as the all-important consideration ; and still another may locate a home because of beauty of scenery and agreeableness of climate. So, changeable persons may prefer homes which may be easily and quickly disposed of, in case they shall desire changes of locality ; while others, regarding permanence of residence as of the first importance, and desiring to establish family homesteads for themselves, their children, and their children's children, may even purposely select homes which may be disposed of only with the greatest difficulty. When, in addition to these facts, the almost innumerable variations of personal taste and caprice shall be considered, the difficulties in the way of setting forth regular rules for the selection of homes in all cases will be apparent. Nevertheless, it will be necessary to overcome, to as great a degree as is possible, such apparently insurmountable difficulties.

In so far as homes are to be considered as investments in

real estate, the rules and suggestions which are to be found in this chapter, and in the preceding chapters of this work, will be in all respects applicable. But, because of the peculiar relation which the home must bear to the investor, other considerations, some of which must be permitted, at least in particular cases and to a limited extent, to outweigh the regular rules of investment, are : general comfort and convenience ; preference and taste ; morality of particular vicinities ; climate ; healthfulness, important factors of which will be good drainage and good drinking-water ; proper society both for young and old ; the laws and customs of States and localities ; accessibility of churches, schools, physicians, places of amusement, stores, and market-places.

Probably the better opinion is that homes should be selected without other strictly pecuniary considerations than that the costs shall be safely within the means of the owners and that the owners shall receive fair values for the expenditures. If, however, it shall be decided that homes must be capable, at all times, of being disposed of with little or no losses, the order of desirability of classes may be stated as follows :

- (1) Simple city homes,
- (2) Moderate city homes,
- (3) Costly city homes,
- (4) Simple semi-rural homes,
- (5) Moderate semi-rural homes,
- (6) Simple rural homes,
- (7) Moderate rural homes,
- (8) Costly semi-rural homes,
- (9) Costly rural homes.

Necessarily, this order will not be invariable, being to a considerable extent dependent upon the particular cities or localities in which homes may be situated ; but, in lieu of more specific rules, the table will prove to be of value in a large number of cases. Elegant country residences, fancy farms, and similar property may be considered, as a general rule, to be extremely difficult to sell, even at prices which will entail upon the owners very serious losses.

City homes will generally possess the advantages of modern

conveniences — society, churches, schools, amusements, etc. — over semi-rural homes, and to a far greater extent over rural homes ; while country homes will have the advantages of pure air, general healthfulness, freedom from noise and disturbance, and the tranquil pleasures of summer life among the trees, fields, and flowers, no less than, to many persons, the brisk and invigorating delights of snow-covered hills and frozen streams.

These are, to a considerable extent, matters of individual taste. But in one very important respect, far reaching in its effects upon society and upon the future welfare of the nation, country homes will possess unmistakable advantages over homes of any other description : the boys and girls, born and reared in refined country homes, will immeasurably excel, in every important respect, those who are born and bred within the confines of large cities.

It has long been a settled rule, admitted probably by the best of thinkers and supported sufficiently by the facts of history, that a nation must look to its country-boys for its great men. The pale, undersized, well-dressed young men who, at all hours of the night, frequent the billiard-saloons, pool-rooms, drinking places, and resorts of disreputable characters in the large cities of our country, indeed afford not only a proof of, and a reason for, the truth of the settled rule, but an incentive for sober reflection on the part of patriotic Americans.

Surely, there can be but one answer to such questions as these : Will such mental, moral, and physical dwarfs successfully cope, in the great duties of citizenship, with the broad-shouldered, broad-minded country-boy, whose sports, like his labors, are honest, open, and manly ? Will fallow, narrow-chested young city belles, whose recreations are but little removed from dissipations, equal, in the sacred duties which should be theirs, the bright-eyed girl, healthy in mind and body, whose bedroom window looks out, not upon street brawls and corner loafers, but upon green hills and waving trees ?

Unless we are willing that our little boys shall be familiar

with slang and profanity, they must be kept away from large cities until their own good and mature sense shall be able to guide them. Unless we are willing that our girls shall receive early suggestions of the world's immorality, we must surround them with scenes of natural purity, in cultivated country homes, until it shall become necessary for them to know, for their own protection, the dangers which they must avoid. After a careful study of circumstances, in each particular case, it seems that the home which will combine the greatest number of advantages with the least number of disadvantages will prove to be one ranking among the best of moderate houses, having a reasonable amount of grounds and garden, and situated in or near a village or small city, of from four thousand to ten thousand population, and being from twenty to fifty miles from one of the principal cities of the country.

And here the following suggestions may properly find a place: If the village which shall be chosen for a residence shall be a small one, having the common, modern tendencies toward rapid improvement, so-called, the individual taxes will probably increase with far greater rapidity than will the real improvements and the population. If a residence shall be chosen in a village or city which is within too easy and cheap access to a principal commercial city, the voting population will probably be made up of irresponsible persons, whose employment in the large city will make easy and cheap transportation necessary; whose chief aim will be to get the greatest possible advantage out of the community in which they live at the expense of others; and who may therefore be expected zealously to vote for and to work for extravagant expenditures of the public moneys, without other consideration than that they cannot possibly be losers, and that they may be gainers, by the extravagances.

With regard to the actual safe cost of homes for incomes of given amounts, or the proportions of principals which may be safely invested in homes, the general rule may be to devote one tenth of working, or income-producing principals to the establishments of homes. Otherwise expressed, the cost

of the home may be equal to the sum of two years' regular income. A person having a principal of fifty thousand dollars, and an income of twenty-five hundred dollars per year, may therefore expend the sum of five thousand dollars upon a home ; a person having a principal of two hundred thousand dollars, and a yearly income of ten thousand dollars, may enjoy the blessings of a home which shall cost twenty thousand dollars ; and a millionaire, having an income of fifty thousand dollars per year, may own a home which shall cost one hundred thousand dollars.

In the majority of cases it is believed that this rule will be found to give satisfactory results. But there are, manifestly, special cases in which it will not apply at all. For example, persons having very small principals, and dependent upon their labors for livings, will, by the rule, be restricted to entirely inadequate, or even impossible homes, while persons who may be worth many millions will be entitled to homes of unreasonable extravagance. A person having a principal of two thousand dollars, and attempting to establish a home for the small sum of two hundred dollars, will certainly become involved in an absurd task ; and a person who shall possess a fortune of a hundred millions, and who shall expend the sum of ten millions of dollars upon a home, may be considered to have acted almost the part of a madman. In the one case, the entire principal, under proper conditions, may be expended in providing a home ; and in the other case a small proportion of the amount which will be allowed by the rule will be sufficient to provide every proper luxury for the home of a person who may be possessed even of so great a fortune.

The limits within which the rule which has been given may apply will prove to be generally correct if we shall place the minimum at fifteen thousand dollars principal, or seven hundred and fifty dollars annual income, and the maximum at one and a half millions principal, or seventy-five thousand dollars annual income.

In applying the rule which is at present under consideration, the income, which forms the basis of the calculation,

should be the *net* income, or that part of the income which is applicable to the ordinary expenses of living — deducting extraordinary expenses, such as taxes upon unproductive real estate, interest on mortgages, etc. For, if a person shall have a gross income of ten thousand dollars per year, and shall be compelled regularly to pay one half of it for such extraordinary expenses, the real income will be but five thousand dollars, and a home which shall cost ten thousand dollars will be properly within the permission of the rule.

Further considerations, which will affect the applicability of the rule in question, are the necessary differences in the expenses of different families and the differences in the necessary expenses of keeping in repair and proper condition different kinds of homes having equal values. Thus, the necessary expenses of a family consisting of a husband, wife, and wife's mother will obviously be much less than those of a large family having half-grown daughters and sons, even though the homes of the two families shall be equally costly. So, the expense of keeping in order a large country residence, having numerous outbuildings, may be much greater than that of a small city house, although the cost of the two homes may be the same. The rule which permits the devoting of one tenth of the principal to the establishing of a home must, therefore, be somewhat modified to suit special cases. If a certain family shall be an unusually expensive one, or if the kind of home which shall be decided upon shall be an expensive one, in the matters which have been mentioned, a more prudent practice will be to devote not more than one twelfth or one fifteenth of the income-yielding principal to the building and furnishing of the home. On the other hand, although, indeed, such courses of action are by no means to be commended, families which shall be contented with inexpensive modes of living in other respects may, without serious danger, devote somewhat more than one tenth of their principals to the building of homes.

It may also be remarked that, notwithstanding the general rule that the expense of living should be in keeping with the

style of the home, all home expenses may, by judicious management, be so regulated as to afford the necessary comforts and enjoyments in a home which, badly managed, will prove to be too expensive for the income of the owner.

Homes should be, in all possible cases, free and clear. Whatever may be the complicated nature of outside investments and speculations, no matter what risks and chances we may be willing to assume in ordinary transactions, let us take no risks with our homes. Let us mortgage and incur, if there shall be no help for it, every other kind of property ; but let no mortgage hang, like a gloomy cloud, above that gentle refuge from all risks and chances—the one spot safe and secure—the home.

The necessity for assuring, in a certain degree, the permanence of homes has caused the various States of our country to enact laws the general effect of which is to exempt homes from sale under executions for the collection of debts. These laws, known as the *homestead acts*, differ somewhat in the different States ; but the general effect is to declare that homesteads, occupied by the owners and their families, and limited to values varying from a few hundred dollars to several thousand dollars, or limited by the allowed area of the lands, shall be exempt from judicial sale for the collection of debts during the lifetime (or widowhood) of the widow and during the minority of the children. The theory of the legally exempt homestead is that it shall be a sure home during the life of the family—a home belonging to the husband, the wife, and all the children. Therefore, in many of the States, homesteads cannot be sold or mortgaged except by the consent of the whole family, the husbands and the wives (as the representatives of the children) being required to join in the execution of the deeds.

In some States, the right of exemption under the homestead acts may be claimed by the proper parties, as a matter of course, without any special precedent act ; while in other States it is necessary either that the deed which conveys the home shall declare that the premises are to be used as a homestead under the statutes of exemption, or that the owner

shall record, in the proper public office, a declaration to the same effect.

The small values to which exempt households are generally limited (probably one thousand dollars is more general than any other amount) have resulted in the gradual decrease in the number of such homesteads in the well-settled States, as the general values of real property have increased. In most of the large cities exempt homesteads are practically unknown at the present time.

Whether the allowable values of homesteads should be increased, is a question which is not entirely without difficulties. It seems, however, that, if the necessity for the homestead laws shall continue to exist, the provisions of the law should be made in all respects adequate to the changed condition of affairs, and that, if the necessity shall have ceased to exist, the laws should be altogether repealed.

The benefits of home life will be materially advanced if, whenever possible, homes shall be so chosen as to be surrounded by families which shall be equal, with respect to wealth, breeding, education, nationality, and religion, with those of the owners. For, if a home shall be situated among superiors, the occupants will endure a real or an imagined humiliation ; and if a home shall be situated among inferiors, a sycophancy which is extremely distasteful to refined persons will seldom fail to make its appearance.

Within recent years, there have become common in many of the States certain corporations, called variously Building Loan Associations, Mutual Loan Associations, Co-operative Loan Associations, etc., whose avowed purpose is the encouraging of savings and the building of homes. More or less complicated methods of subscribing for, paying for, and pledging shares, and of bidding for loans to be secured by bonds and mortgages, or by pledged shares, or both, are provided for by the statutes of the different States, and by the regulations and by-laws of the corporations. Briefly described, and without unnecessary attention to details, the theory of these corporations appears to be that they are at once a means of safe and advantageous investment for their

members, and a means of easy and advantageous borrowing also by the members—that one member may safely invest money, at satisfactory rates of interest, in the shares of such a corporation, while another member may easily borrow, at satisfactory rates, of the funds which the first member has invested. Evidently such a claim must be absurd; for if the investor shall loan money at high rates of interest, the borrower must pay the high rates, and, inversely, if the borrower shall pay low rates of interest for a loan of money, the investor will receive only low rates.

Associations of this kind are sometimes (perhaps generally) exempted by the statutes from the effects of the usury laws; this fact, together with other results of general investigations, must lead to the conclusion that the borrowing members must pay rates of interest which are higher than the usual rates, and also that other charges may cause the actual rates which must be paid to exceed the legal rates.

Corporations of this kind have been of considerable apparent benefit in the building up of cities and villages. They have also probably been the means of increasing the number of homes which are owned, at least nominally, by those who occupy them. They undoubtedly afford quick facilities for borrowing money, and by their circulars and notices may often suggest the owning of homes to those who would otherwise never own their homes. For these reasons, corporations and associations of this kind, honestly managed, are fairly entitled to the credit of being generally beneficial; and it is far from the purpose or wish of the author in any way to disparage them. But the fact of the matter must be (and such facts are not to be withheld) that homes which shall be established by means of these associations will be among the most costly for the values which will be received.

For persons of some means there will be no necessity of recourse to borrowed funds for the building of homes. Suggestions for their instruction in this respect have already been given. But for those who may have little or no apparent means, the question whether it will be more advantageous to build homes before they can be paid for, and to pay taxes,

and principals and interest of mortgages until the homes may be made free and clear, or to pay rent for homes until such times as permanent homes may be acquired and paid for, will be of no little importance.

The theoretically and sentimentally correct process of establishing an independent home out of the simple elements of good health, industry, economy, and steady savings may be described as follows :

Starting out in the family life, with none of the elements of success except those which have been mentioned, the family must labor and economize rigidly in every possible direction, without false pride or unreasonable haste, living in poor houses for the sake of low rents, eating cheap food, wearing cheap clothing, and investing all savings with strict caution and promptness until such time as a small, cheap house, but such as is capable of future enlargement and improvement, may be secured and entirely paid for. The process must then continue as before, under somewhat easier and better conditions. The first great step has been successfully taken. The home has been obtained—the perfect home; for, small, and plain, and poor though it may be, it is actually owned by the family. It is free and clear. No mortgage clouds its sunshine. It is a freeman's free home; and in every land wherein it seems to us worth while for the sun to shine a freeman's home is indeed his castle.

At future times, as the results of the self-denial and prosperity of the family shall become greater, such a home will be beautified and improved, until it becomes, in all respects, sufficient—a comfortable, beautiful, independent home, every part of which will be hallowed to the family by which it has been so faithfully earned. Such is the perfect process of home-making. It follows perfectly from all the correct principles of family economics and of investment. It will lead no person beyond his means; it will take no risks of loss; it will require no struggle to meet improper expenses; and it will lead always steadily and surely up to the desired end.

Unfortunately, perhaps, such an old-fashioned course as

has been described ill suits the modern spirit of haste and unrest. Nevertheless, it will prove to be well worth the while, if those who shall contemplate the owning of homes by means of imagined quick methods, shall put to themselves, with deep earnestness, one pertinent question—do these corporations for the building of homes commonly own houses which have been obtained through foreclosures? Every house thus owned must represent one failure of the modern method—one family whose dearest hopes have been blasted — one ruined home.

We come now to the consideration of real property as the security for direct investments, or for the purposes only of securing principals and of furnishing incomes.

At the outset, it must be remarked that the judicious purchasing of real estate will not always be a simple matter. It will always require careful study, caution, and independent judgment, if not experience. Therefore, if one shall be fortunate enough already to possess real estate which shall return a fair and regular income, which shall show no tendency to decrease in value, but, on the contrary, shall steadily increase in value, if ever so slowly, year by year (or shall decrease in value only because of the poor character of buildings which may be advantageously replaced by new and better ones) all temptations to dispose of the real estate for the purpose of making better investments should be steadfastly resisted, and the substantial investment should be in no wise interfered with.

For the majority of business women, real estate which has been long in the possession of the owners' families will possess inherent and substantial advantages over newly acquired property. The characters of the buildings and neighborhoods, the average rentals, taxes, and other expenses, the ward and block numbers, and other descriptive features, and many other necessary elements, will be well known to the owners, or may easily be ascertained by reference to old account-books or check-books; while, in the case of newly purchased real estate, many of these elements can only be estimated from information which must be obtained from

former owners, from the work of expert appraisers, or from arduous investigation.

In real estate matters, to a very marked degree, will the time-honored recommendation to leave well enough alone prove to be applicable ; especially will this be true under the somewhat difficult conditions of investment which prevail generally at the present time.

The following case—an actual one—will afford a striking example of the truth of these statements :

A young man, upon reaching his majority, became the owner of an undivided part interest in valuable business real estate, situated in one of the principal cities of the United States. The net annual rentals which the young man received from the real estate amounted to about four thousand dollars, slightly increasing each year. Notwithstanding these facts, and the desire on the part of the other owners to retain the property, the young man instituted expensive partition proceedings, sold the property, and received a handsome sum as his share of the proceeds. In less than ten years the entire principal which was possessed by the young man had dwindled to less than nine thousand dollars (and this, without spendthrift habits or expensive vices), while information of a most trustworthy character shows that the net income from his former interest in the property, with which the young man had foolishly parted, for the year last passed was actually somewhat more than forty-three hundred dollars.

The difficulties which will be met with in the purchasing of real estate must not be underestimated, nor should they be considered so great as to place this safest of all manners of investment beyond the attainment of properly instructed business women. For the difficulties may be overcome without unreasonable task, and, when once mastered, the art of investing in real estate will furnish ample rewards for the time and patience which may have been consumed in the learning of it.

An examination of the conditions and circumstances of the land itself which are necessary for satisfactory investments in mortgages has been given in detail and at length

in the preceding chapter, for the reason that mortgagees must always anticipate the possibility of owning the mortgaged premises. The considerations which have been there mentioned must be thoroughly satisfied in investments in which real estate shall be purchased by the investors. If any distinction in this respect is to be made between the two forms of investments, it must be remarked that investors should make use of even greater care when purchasing real estate than when loaning money upon mortgages ; for in the former case, the chances of receiving back again the amounts which have been invested, without the necessity of owning the securities, will be, of course, entirely out of the question.

For the sake of avoiding unnecessary repetition, it will be sufficient to remark that, in all kinds of real estate transactions, the preceding chapter, the chapter upon the general principles of investment, and the present chapter must be read in connection the one with the others, regarding either as supplementary to the others.

The present chapter, in the main, must be devoted to the examination of facts and conditions which apply so exclusively to the ownership of real estate as not to have been suggested in the preceding pages of this volume.

There is, however, one consideration, which has been explained in the preceding chapters, but which, because of its particular applicability to the ownership of real estate, will require a further, and an enlarged, examination in this chapter.

The advisability of examinations of the laws of particular States wherein investments are to be made has been frequently alluded to. When contemplating the purchase of real estate (or the ownership through foreclosure or otherwise) this examination must be extended to include the subjects of *Eminent Domain*, or the condemnation of private property for particular, public, or semi-public uses ; *Adverse Possession* ; special assessments ; and status of non-residents. The explanations which follow will be sufficient to give an understanding of these subjects.

In the words of the New York statute: "The people of this State, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State ; and all lands, the title to which shall fail from a defect of heirs, shall revert or escheat to the people" ; and the same rule, in effect, exists in the different States of the Union.

The practical effect of these laws is that every owner of lands holds title to the lands, subject to the right of the State within which the lands shall be situated, to pass laws which shall govern the uses of the lands ; to tax the lands ; and to take possession of the lands, upon payment of legally determined compensations, and otherwise complying with the laws, for certain particular uses (such as roads, public parks, public buildings, etc.) which are considered to be necessary for the welfare of the general public.

The last-mentioned right of the State in private lands is called the right of eminent domain. States have the power, under the laws, to delegate the right of eminent domain to certain other parties, such as municipal corporations (cities, counties, villages, etc.), railroad corporations, etc., in order to enable them to obtain, at fair and reasonable prices, lands which otherwise they might not be able to obtain at all, or at least only by the payment of exorbitant prices, and which are necessary to them for purposes which are presumed to be for the benefit of the public.

The legal process of taking private lands for public uses, under the laws of eminent domain, which process is called the *condemnation* of land, may be generally described as follows: The necessity for the condemnation having been determined, the condemning corporation notifies the land-owners of the proceeding (by advertisements in the newspapers, by forwarding the notices through the mails, or by personal service upon the owners—usually the former), and by application to the courts obtains the appointment of commissioners for the purpose of fixing the prices which must be paid for the lands which are to be taken. If the proceeding shall not be contested by the owners, the amounts which shall be

fixed upon and awarded by the commissioners will be paid to the owners or deposited in the banks or trust companies designated by law for such purposes, and, upon the order of the court, the title to the lands will pass to the condemning corporation. If the owners shall wish to contest the proceedings, the laws of the various States provide methods of trial, by means of which the fair values of the lands which are sought to be condemned may be determined by courts and juries; methods of appeal from erroneous determinations of courts or juries are also provided.

With regard to the right of eminent domain, the Constitution of the United States provides simply that private property shall not be taken for public uses without just compensation, leaving the necessary legislation in other respects to the various States. It is therefore evident that the right of eminent domain may be greatly abused by the enactment of laws which will work to the disadvantage of land-owners, more especially if the owners shall happen to be non-residents. Thus the laws may be such as to allow brief advertisements in insignificant newspapers to serve as sufficient notices of condemnation proceedings; the right to condemn land may be conferred upon fraudulent corporations, who will condemn large quantities of valuable land for uses which are nominally public and actually personal and private; the laws may be such as to aid commissioners and juries in placing small values upon the lands which shall be condemned; the times within which appeals may be taken from unjust decisions in cases of default may be made so brief that, before the owners shall be aware of the condemnations, the remedy of appeal will have been lost.

The tendency (and the actual practice) sometimes is to discriminate against non-resident owners in all cases where the owners shall be unaware of the proceedings, and therefore shall make no defence, by allowing them ridiculously small compensations for the lands which shall be taken, thus practically stealing the lands. The possibility of such an experience is by no means so remote that it may be regarded as practically imaginary. Indeed, legalized iniquities of this

kind have been, and will again be, put into actual and successful operation ; and cases are not wanting in which, by means of the laws which are in question, land-owners have been deprived of valuable real estate for which they have received absurdly inadequate compensations.

In a general manner, it may be said that lands which have been taken by condemnation proceedings must be used for the specific purposes for which they have been condemned ; else they may be reclaimed by the former owners. Thus generally a corporation cannot condemn lands for the purpose of building railroad tracks, and afterward sell the lands to individuals for private uses. For this reason, in cases where condemnation proceedings have been made use of for the fraudulent acquisition of real estate, the condemning parties often attempt (by representations to the effect that the property in question has been already lost to the owners beyond recovery) to procure quit-claim deeds, upon the payment of trifling amounts, and in this manner they may obtain good titles to the real estate for all ordinary uses and purposes. The remedy for the prevention of such evils will be such examinations of the laws as have been suggested ; or the simpler one of limiting investments to States wherein frauds of this nature are known to be impossible of accomplishment. For such investors as may have exposed themselves to the dangers which have been mentioned, by the purchasing of lands in dangerous States, the remedies, at so late a stage, will be the exercise of a constant vigilance ; and, if their lands shall have been actually condemned, and the proceedings shall be beyond appeals, owners should refuse to give quit-claim deeds or other releases for inadequate considerations, and should hold the condemning parties rigorously to the letter of the laws, with the view of finally forcing them to the payment of fair compensations for the lands which they have taken.

Adverse possession is the right which a stranger has to acquire the title to real estate belonging to another by simply occupying and claiming it without right, for a certain period of years, which is declared by the laws of the State within

which the real estate shall be situated to be sufficient for the purpose. The true construction of the law, with regard to the acquiring of titles by adverse possession, should be that the use and occupation which are required to divest the true titles must be actual, continuous, open, adverse, and notorious to such an extent as to raise the presumptions that the squatters shall intend to claim the lands, in spite of the real owners, and that the real owners shall not intend to oppose them. In strict justice, every possible construction of the law should be in favor of the rightful owners, and against the squatters, whose purpose is, in plain language, to steal the lands of others. But, as a matter of fact, the laws of some of the States appear actually to favor these land thieves. While the general rule of law is that an occupation of land for a period of twenty years will be necessary before squatters may obtain good titles, the laws of some of the States require much shorter periods of occupation. So the evidence of the necessary occupation may be made difficult or simple by the laws ; the manner of occupation which shall be required may favor squatters by allowing them to claim titles to large tracts of land while they actually occupy and use only small portions, or by construing the erection of shanties which may be only occasionally visited as sufficient occupations ; and the laws may be such as to allow courts and juries generally to favor resident squatters, to the injury of rightful non-resident owners.

Owners of real estate which shall be liable to such acts of injustice will do well to dispose of their lands at the first propitious opportunities ; and, while awaiting the opportunities, the lands may be frequently and thoroughly surveyed by the owners and witnesses, careful memoranda being made of the visits, in anticipation of any claims which may be made by squatters against the true titles to the lands.

Assessments, for such purposes as the grading and paving of streets, the building of sewers, and the construction of water-works, are often very heavy burdens upon taxpayers. Unfortunately, such public transactions are almost always much more expensive than they should be. The laws

which regulate the apportionment of such assessments among the tax-payers will therefore be of importance to owners of real estate. The general method of apportionment is, to assess certain portions of the expense upon the near-by real estate, upon the ground that it will be especially benefited, and the remainder upon the general tax fund, or against all the taxpayers, upon the ground that the general public will be, in some degree, benefited. These proportions may vary greatly in different States. For example, the rule in one State may be that three fourths of the amounts of assessments shall fall upon the real estate which shall be specially benefited, and one fourth upon the general tax ; while in another State the proportions which the two classes of taxpayers must bear may be reversed. Evidently, an owner of large tracts of land which shall be likely to be assessed for the purposes mentioned will prefer that large proportions of assessments shall be allotted to the general tax ; and a person who may own real estate which shall be situated in neighborhoods where there will be no further assessments will naturally favor the opposite extreme. Thus, the kind and location of real estate which it shall be proposed to purchase may be regulated, to a certain extent, by the laws with respect to the apportionment of assessments.

The manner of paying large assessments, as provided by the laws, may also be of importance ; for in one State it may be necessary to pay such assessments within short periods, in order to save heavy penalties, while in another State tax-payers may be given generous times with light penalties. So, also, in one State real estate upon which assessments may have become delinquent may be quickly sold by the public authorities, while in another State taxpayers may be allowed several years within which to make good the payments.

To investors who shall be active and energetic, and who shall seek good investments wherever they are likely to be found, the status of non-residents in the different States, whether by actual specification of the laws, by distorted constructions of the laws, or by the general disposition of the

people, will be a question which may not profitably be neglected. The laws of one State may discriminate against non-residents by allowing manifestly insufficient notices of legal proceedings, and in other respects which have been already suggested in this work. Also, the disposition of the people in certain States may be strongly in favor of an unfair treatment of non-residents.

As has been suggested, a remedy for this evil (a remedy which will prove both curative and preventive in the future) will be a uniform disposition, on the part of non-residents, to allow such States and such citizens to take care of all their own investments, without assistance of any kind from outside, non-resident capital.

Recurring now to the general principles of investment, it will be remembered that the first consideration concerning an investment is, that it shall be as nearly as possible absolutely safe, for which consideration two requisites have been stated: namely, that there shall be a real and ample security, and that the security shall be within the control of the investor; the second and remaining consideration being that the investment shall return a fair and regular income.

These invariable rules must not be applied to investments in the form of real estate which shall be owned by investors.

With reference to the first requisite of safety, it will be observed that a marked difference exists between investments which are in the nature of loans (of which the mortgage upon real estate is to be regarded as the highest type), and investments in which the securities shall be purchased by the investors (of which the ownership of real property is to be regarded as the highest type), in the matter of the margin of safety, the general principles of which have been fully explained in preceding chapters.

In the former, or loan-investments, the margin of safety is, in the main, although subject to some variation, a fixed and definite quantity, while in the latter, or purchase-investments, this margin may be great, small, altogether wanting, or, indeed, instead of a margin of safety, there may be a margin upon the wrong side. Thus, in the case of a

mortgage upon real estate, the margin of safety is, it will be remembered, the difference between the actual value of the real estate and the amount of the mortgage (always, it must be presumed, in favor of the investor); in the purchase-investment in real estate the *present* margin of safety is the difference between the actual value and the cost of real estate, which difference will exist to the advantage of the owner only in the case of what is commonly called a good bargain.

If real estate shall be purchased at less than its actual value, there will be a present margin of safety; if, as is more apt to be the case, the value of, and the price which shall be paid for, real estate shall be the same, there will be no present margin of safety; and if the cost of the real estate shall be greater than the actual value, there will be a negative margin, or a margin upon the wrong side—a margin of danger, rather than a margin of safety.

Since we cannot always calculate upon the purchasing of good real estate at less than its real value, it is plain that, in the majority of cases, the required margin of safety must be provided in some other manner than the difficult seeking after exceptional bargains. Good bargains in real estate are, at certain times, to be obtained in manners which will shortly be explained; but such opportunities must be regarded as exceptional, and as requiring special conditions which are not often easily to be fulfilled.

Properly selected real estate will almost invariably increase in value year after year, until a final maximum limit shall be reached; and this limit, in the best kinds of real estate, will often be maintained indefinitely when once attained. The increases in the values of real estate will be widely different in different cases; in some cases, the increase will be slow and regular, in others rapid and irregular. Nevertheless, real estate, if wisely selected, and purchased under proper conditions, will seldom fail, in the long run, to increase materially in actual value.

The increases in values, then, must be generally relied upon to furnish the necessary margin of safety; or, in other words,

there must be either an actual present, or a sure future, or prospective margin of safety ; and the perfect purchase-investment will be that in which both of these margins will eventually appear. The requisite which is now under consideration, as applied to real estate investments, will therefore suggest the first general rule for the purchasing of real estate ; to wit : the real estate must possess either a present or a prospective value which shall be greater than the actual cost.

A possible exception to this rule will be that class of real estate which, although not likely to increase materially in values, shall return such large percentages upon the amounts invested as to compensate for failures in other respects to meet the demands of good investments. In such cases, the rentals must be exceptionally large — from twelve to fifteen per cent. upon the amounts invested—and this condition will have the effect of restricting such investments to real estate of the poorest kinds ; such as tenement houses, in which tenants may be crowded to such an extent as to make the aggregate of their small rentals amount to large sums ; and premises which are used for illicit, or at least unsavory, purposes, in which cases landlords must be well compensated for their unpleasant risks of notoriety and legal difficulties.

There are also cases in which it may be to the advantage of investors to purchase certain pieces of real estate, even though the prices which must be paid shall be somewhat greater than the actual values ; as where an investor shall own a plot of ground which will be materially benefited by the addition of an adjoining lot, because of the enlargement, improved facilities for light and air, frontage on other streets, or improvement in shape which will be thus obtained.

In such cases, it is very common for the owners of the desired lots to place very high values upon them, with the expectation that the adjoining owners will be willing eventually to purchase them at almost any prices. But investors must not be willing to submit to extortion. In such a case, the seller may be entitled to a price somewhat in advance of the regular market price, because the lot in question will be

actually more valuable to the investor than to any other person; but this increase must be founded upon actual benefits, and not upon a calculation of how much money may be squeezed out of the investor by the aid of an over-enthusiastic desire on the part of the investor for handsome and extensive improvements. With the knowledge of real-estate values and rentals in the neighborhood of the property, which the investor should possess, a correct calculation of the price which may be profitably paid for the desired adjoining lot will not be a very difficult matter, and the investor should not be induced to pay a price which shall be higher materially than that resulting from the calculation.

For the purpose of avoiding any advance in the prices of real estate which may result from the knowledge that the proposed purchasers are adjoining owners, investors often send agents to negotiate for the desired real estate, undertaking by this means to keep the owners in ignorance of the identities of the proposed purchasers. Probably, in the majority of cases nothing will be gained by such a proceeding. The owners of desired lots will at once suspect the true state of affairs, and will make their prices accordingly. No amount of duplicity will deceive them into selling their lots at low figures; indeed, the very secrecy of such matters will generally prove to be a sufficient hint in this respect. Therefore, if for no other reason than that of actual benefit, the better practice in such a case appears to be to state plainly and honestly the principal facts, together with a promise that an unreasonably high price will not be paid, and a suggestion to the effect that, if the investor shall make the proposed improvements upon his own property without the acquisition of the adjoining lot, the opportunity for the sale of the lot at a fair price under the present circumstances, will be indefinitely postponed.

In order to purchase real estate at less than its actual value, it will be necessary, first of all, that the property shall be paid for in cash. Real bargains in real estate, like other real bargains, are not to be obtained on credit; for the strongest incentive which may force one to sell his property

at a low price will be the necessity for money for immediate use, and in general no amount of credit or security will serve as a substitute in such a case.

The only safe general rule with regard to the exchanging or trading of real estate will be that exchanges shall be entirely avoided. If an investor shall have become possessed of a bad investment in real estate, as a general rule it will prove more advantageous in the end to dispose of the real estate at a low figure, than to endeavor, by a succession of exchanges, to get out of the difficulty without loss. Desirable real estate can almost always be sold for cash, and only bad bargains are offered for exchange.

Indeed, so large a proportion of exchanges result disastrously that there seems to be a certain warrant for the facetious theory that an exchange of property is the only practice in which there is a possibility that both parties to the transaction may be cheated. None but the most skilful and experienced dealers in real estate can afford to indulge in exchanges ; the many suggestions of the real-estate brokers with regard to advantageous exchanges, may, therefore, be safely disregarded, upon the general ground that their opinions will be prejudiced in favor of exchanges by the double commissions which sometimes accompany such transactions.

In general, real estate should be purchased only in times of business depression ; and preferably, it is evident, at a period in a time of depression when values of almost all kinds of property shall have reached their lowest points. Such a proceeding will not always be easy of accomplishment, for the reason that the lowest values which will be reached are not always to be correctly determined in advance without the exercise of judgment and watchfulness, if not of special ability. But the following suggestions will serve to indicate the reasoning by which such determinations may be made : Long periods of profitless business always bring general depressions of values, for the sufficient reason that there are, at such times, many who need money, and therefore must sell their property, and, at the same time, few who have the available money to invest—in other words, the supply will exceed

the demand, and a fall in prices must follow. In accordance with the adage to the effect that we must go against the current if we wish to catch the driftwood, a simple rule with regard to the handling of real estate will be to buy when others wish to sell, and to sell (if at all) when others wish to buy.

It has been said that periods of depression occur generally at intervals of about fifteen years' duration, and extend through periods of from three to five years ; an investigation of the facts will show that this statement is not farther from the truth than statements of such a general nature usually are.

A serious difficulty in following out the rule to purchase real estate only in times of depression, will be the general inability to obtain cash money at such times. Mortgages which are due cannot be called in, even if such a course shall be desirable ; for the general dearth of money will render it difficult, if not impossible, for mortgagors to obtain the money with which to pay off their mortgages. Real estate cannot be turned into cash ; for to sell real estate at such times, in order to purchase other real estate, will evidently be absurd. The practical way out of this difficulty is to avoid it entirely by preparing for a period of depression before it shall arrive. While all kinds of business are in flourishing conditions, while prosperity and success are to be met with upon every side, while enterprises and industries are everywhere thriving, and no thought of adversity exists, the sagacious investor, whose independent judgment is uninfluenced by the rush and excitement of the masses, and who well knows that over-production, excessive speculation, high values, and "booms" are the sure forerunners of business crashes, and subsequent depressed values, will quietly lay aside the cash which will soon perform for him grand services, when the speculators and "boomers" shall be silent and crushed.

When providing in this manner for the cash which is to be employed during the next period of depression, great care must be taken in the selection of depositories ; for it must not be forgotten that banks and other financial institutions, which appear to be in flourishing conditions during prosperous times, may meet with disaster just at the time when

investors shall wish to make use of the cash which has been laid aside for investment.

As a matter of course, real estate may be purchased more advantageously from owners who are anxious to sell than from those who will require urging ; for the only effective urging in such cases will be the offering of tempting prices, and investors must see to it that the prices which shall be offered by them shall be tempting because they are cash prices, not because they are exceptionally high. Therefore, no anxiety must be manifested on the part of proposed purchasers. After deciding upon the desirability of certain pieces of real estate, their values should be fixed upon ; and prices somewhat lower than the investors shall be willing to pay, and determined upon without reference to the prices which may be asked for the premises, may be offered, with the understanding that the offers are for cash, to be paid in full at the passing of the titles.

The practice of asking prices which are higher than those which the sellers will be willing to take, with the expectation of lowering the prices in response to the chaffering which will precede final agreements ; and similarly, the offering of amounts which are less than those which the purchasers are willing to pay, in anticipation of haggling about prices, are very common among dealers in real estate. Indeed, the methods by which many real-estate brokers accomplish the tasks of earning their commissions are by no means of a kind which will be most agreeable to refined and well-bred persons. Without regard to the unpleasant nature of such practices, it appears to be by no means certain that advantage is to be obtained in this manner. To many persons, the more dignified practice of stating in a straightforward manner the one price which will be paid or accepted, with the full understanding that there shall be no haggling concerning prices, will be considered in every respect to be the more satisfactory. Certain it is, that general reputations for plain, straightforward, business-like methods, will be of material benefit to investors. But, whichever course may be adopted, it should not be carried to an extreme ; perhaps in this, as in

most other affairs, the golden mean will prove the more satisfactory.

There are many circumstances which may produce anxiety on the part of owners of real estate to sell their properties ; and these circumstances must be inquired into before purchasing. If the reason for an owner's anxiety to sell real estate shall be the effects of hard times, and the actual need of money ; or the desire for money in order to establish a business, to accomplish a hobby, or to gratify a whim ; or the necessity of selling under the directions which are contained in a will, or the decree of a court of justice ; the reasons will appear to be satisfactory. But if an owner shall be desirous of selling real estate because the real estate has proved to be a bad investment, or because the buildings may be in dangerous conditions, or because he may have become aware of circumstances which will act to decrease the value of the property, his reasons, if well founded, will also be good and sufficient reasons for refusing to purchase the property.

As a general rule, vacant or unimproved real estate will be the first kind to feel the effects of hard times, because the expense of keeping such property, and the lack of income from it, will cause it soon to become burdensome. For similar reasons, heavily mortgaged real estate will be found early on the market in times of depression. Improved free and clear property, on the other hand, will often carry itself easily through long periods of depression with no greater inconvenience to the owners than considerable reductions in the rentals.

Auction sales may prove to be advantageous mediums for the purchasing of real estate, for they are sometimes the means of putting upon the market valuable properties which may be offered for sale only because there are special circumstances which practically compel a recourse to such quick and simple methods. When purchasing real estate at auction sales, however, the exact values of the properties, the actual reasons for, or causes of the sales, and the general and particular natures and conditions of the premises and their surroundings, should be thoroughly understood.

A common method of acquiring real estate at less than its actual value is furnished by the sales of real estate for delinquent taxes and assessments, which take place at different periods in the different States. The procedure of tax sales, varying somewhat in different States, may be generally described as follows :

At the time which is prescribed by law, and after the advertising or other public notices which may be required by law, real estate upon which taxes or assessments have become delinquent is offered for sale at public auction, and sold by the authorities to the persons who shall offer to pay the delinquent taxes or assessments and the expenses of the sale for the smallest (or certain designated) quantities of the particular pieces of land ; or the real estate may be leased to the persons who shall offer to pay the charges for leases of the shortest terms. The purchasers then receive from the sheriff, or other officer designated by law, certificates, stating the facts in connection with the tax sale, and containing proper descriptions of the real estate which has been sold. After regularly paying the taxes and assessments which shall accrue each year upon the particular piece of real estate (either by attending a tax sale of the real estate each year, and bidding it in, or in the usual manner) for a prescribed number of years, the purchasers receive from the proper officer tax deeds, which deeds, from the times of their deliveries, or after certain intervals, or by means of certain legal proceedings, will vest in the purchasers the same titles which the previous owners had. At any time, up to the actual vesting of the title in the purchasers, the previous owners (or others provided for by the laws, such as mortgagees, and judgment-creditors) may redeem the real estate by paying to the purchasers the amounts which have been expended and interest on the same, usually at high rates ; the theory being, that the purchasers shall receive either good titles to the premises which they have purchased or ample returns upon the amounts which have been paid. In some of the States the rates of interest or penalties which must be paid when redeeming real estate which has been

thus sold for unpaid taxes are still high ; but the general tendency will doubtless be to reduce these rates gradually as the facilities for disposing of real estate by means of tax sales shall increase.

Inasmuch as the delinquent tax for which a certain piece of real estate shall be sold will be, at most, but a small proportion of the value of the real estate, it will be evident that, as a general rule, only property which shall have little present value can be readily purchased in this manner. Good real estate need never be sacrificed at such entirely inadequate figures, if any sort of returns can be gotten out of it in the way of rents or the profits of cultivation. It is plain, therefore, that tax sales generally will be confined to unimproved properties ; more often than otherwise situated in rural or suburban districts, or in young cities, where a spirit of speculation may lead the people too deeply into real estate transactions, and where real estate will be subject to a great degree to the influences of periods of inflation and of depression.

Investors who shall be willing to devote the necessary time and abilities to the study of tax sales may often obtain, very cheaply, by this means, real estate which will increase greatly in values in the future. But the practice will be found to involve considerable study and labor ; it will be distasteful to many persons, because it seems to be a grasping and an avaricious practice—an attempt to obtain another's property for little or nothing ; and it has the decided smack of speculation. It may also be said that such methods of obtaining titles to real estate, although necessary for the maintaining of the State, are repugnant to the true policy of the law. The validity of tax titles will therefore depend practically upon a strict and accurate compliance with the laws. Every requirement of the statutes, with regard to the entire proceedings, must be strictly followed ; otherwise the courts will declare tax deeds void, and thus permit former owners to redeem the property, though the regular period of redemption may long since have passed.

Still another possible means of acquiring real estate cheaply is the foreclosure of mortgages and the buying in of the real

estate by the mortgagees. This method is in all respects legitimate and proper, provided mortgagors shall not be treated with injustice or with undue harshness; and in many cases it will be practically unavoidable, since it is the only available means of protecting mortgage-investments. In the earlier pages of this volume, foreclosure proceedings have been sufficiently explained, and suggestions of a somewhat ethical character have been made concerning the manners of dealing with mortgagors. The suggestions referred to may, perhaps, without impropriety, be supplemented here by the remark that, whenever it shall become necessary to foreclose perfectly safe mortgages, and the mortgagees shall not be unwilling to become the owners of the mortgaged premises, offers to purchase the equities of the mortgagors, even at prices which shall be much less than their actual values, may be regarded as acts of generosity on account of which mortgagees will suffer no final losses. Indeed, putting to one side all generous motives, and viewing transactions of this kind in the light of self-interest only, mortgagees in many cases can afford to purchase the equities of their mortgagors at prices which shall be somewhat higher than the expenses which foreclosures must entail. Such transactions should, however, be considered only after careful examinations of the titles to the mortgaged premises, for the purpose of providing against other liens and incumbrances. Moreover, they must not be considered at all if mortgagees shall have reasonable doubts concerning their abilities to act generously towards mortgagors without injury to themselves. An important distinction must here be made between investments in which unimproved real estate shall be purchased for the purpose of future improvement, and those in which real estate which is already improved by buildings of a permanent character shall be purchased. Improved real estate will have the advantage of furnishing immediate returns upon the money which shall be invested, the rentals ordinarily belonging to the purchasers from the days of the deliveries of the deeds; while a corresponding disadvantage will be the fact that improved real estate will not be easily

available for the erection of new buildings which shall be in all respects satisfactory to the owners.

The amounts of rentals, taxes, insurance, and other expenses being once ascertained, the calculation by means of which the present quality of an investment in improved real estate is to be determined, will be a simple one ; for the investor has only to obtain, from these data, the net returns from the property, over all expenses, in order to know exactly what the present percentage of income from the property will be. If the net returns shall amount to over six per cent. upon the amount which must be invested, other conditions being in conformity with regular principles, the investment must be considered as highly satisfactory. In fact, if there has been no mistake or omission in the calculation, a net return which shall amount to considerably less than six per cent. upon the total cost of the real estate will prove, in the main, to be better than the average returns from equally safe investments.

The calculation upon which the success or failure of such a transaction will largely depend should be, whenever such is possible, founded upon actual rather than upon estimated data. The actual average of rentals for a number of years ought to be known with reasonable certainty ; the amount of taxes and water rates should be learned directly from the tax books ; and the possible future assessments from the conditions of surrounding streets, and the cost of previous public improvements which are similar to those which are likely to be made. Similarly, all expenses, such as insurance, repairs, janitors' salaries, heat, light, etc., are to be determined from the most accurate statements which may be obtained, together with careful examinations of the premises, conversations with janitors and owners, and a general ability on the part of purchasers to estimate closely the costs and values of such items. Careful attention to these matters will be necessary, for the reason that little dependence may properly be placed upon the statements of owners who wish to sell, and of agents who are looking chiefly for the commissions which will result from the sales.

A common trick, which has been practised by unscrupulous dealers in real estate, is the filling of buildings which they wish to sell with dishonest tenants, at merely nominal rents, with the understandings that the tenants will assist the dealers in misrepresenting the amounts of the rentals, and by this means in obtaining high prices for actually undesirable properties. It is scarcely necessary to add that dishonest dealers in real estate will likewise understate all items of expense in connection with property which they are endeavoring to sell on the strength of its investment qualities.

In all cases of permanently improved real estate (and by this is meant real estate upon which are buildings which are intended to be permanent, not being erected for temporary purposes, or so old and in such poor conditions as to be necessarily short-lived) a sinking fund must be included in the data by means of which the calculation of returns shall be made. The best of buildings will evidently not endure indefinitely, and the calculation in question must place investors in such positions that, when particular buildings shall have become worn out, and practically useless, the investments will have provided for the erection of new buildings, of at least equal costs with the old ones. The sinking fund must necessarily be a matter of estimation, since, evidently, it will be impossible to determine, accurately, during what periods of time certain buildings may be maintained in tenantable conditions ; it will also vary with the ages, kinds, and qualities of buildings, with the wear and tear upon buildings, and with the amounts which shall be devoted to the repairing of buildings, from year to year. If it shall be estimated that a certain building will endure for a period of one hundred years, the annual sinking fund will be the cost of the building divided by one hundred, or one per cent. of the cost ; if seventy-five years shall be allowed for the life of a building, the annual allowance for the sinking fund will be one and one third per cent. of the cost ; and if the life of a building shall be estimated at fifty years, the annual sinking fund will be one fiftieth, or two per cent. of the cost.

For first-class new buildings of brick and stone, with

ordinary amounts of repairs, probably one per cent. per annum may be considered to be a fair allowance for the purposes of sinking funds ; for new buildings of poorer or ordinary qualities constructed of brick and stone, the allowance should be about one and one half per cent. per annum ; and for new frame buildings, which shall be kept at all times in good repair, probably two per cent. per annum will prove to be none too high.

For the purposes of a practical illustration of the statements which have been made concerning the purchasing of improved real estate, we may suppose that a certain plot of ground and buildings shall be offered to an investor for the sum of two hundred thousand dollars ; that a fair division of the price between the land and the buildings will be one hundred and forty thousand dollars for the land and sixty thousand dollars for the buildings ; and that the necessary data of expense for the calculation of the present investment value of the property have been ascertained to be as follows :

Annual taxes.....	\$2000
“ water rents.....	150
“ janitor's salary.....	600
“ insurance.....	200
“ repairs, commissions, etc.....	700
“ sinking fund, 1 %.....	600
Total.....	<u>\$4250</u>

If, now, the average annual rentals shall be found to be twelve thousand dollars, it is plain that the investment will not prove to be satisfactory ; for, after deducting the necessary expenses and allowances, the investment will yield an income of less than four per cent. upon the amount which must be invested. If the average of the annual rentals shall be sixteen thousand dollars, the net return will amount to nearly six per cent. upon the amount which is to be invested, and therefore, if other conditions shall be satisfactory, the purchase may be safely made. Conversely, in the first case, the proposed purchaser may make an offer of one hundred

and fifty thousand dollars for the property, calculating upon an income of somewhat over five per cent. from the investment.

A rough rule, for general purposes, and one which will not lead very far from the truth in the majority of cases, is to allow two and one half per cent. upon the entire cost of the real estate (including both land and buildings) from the total annual expenses. If, then, an investor shall be satisfied with a net income of five and one half per cent., the necessary average rentals may be quickly calculated as eight per cent. upon the price which may be paid for the real estate.

After the terms and conditions upon which real estate is to be purchased have been orally agreed upon between the vendor and the vendee, they should be at once put in writing, in the form of what is known as a contract for the sale of land, or a "contract for property." Upon signing the contract for property, a portion of the agreed purchase-price is paid to the vendor as a consideration for the contract, or, as is commonly said, "to bind the bargain." Upon general principles, this payment should be as small as the vendor shall be willing to accept; for ever so small an amount will be a sufficient legal consideration, and, if the purchase shall fail to go through, the proposed purchaser may not be able to get back the amount which has been paid on account, because of legal difficulties, or because of a suddenly acquired irresponsibility on the part of the vendor.

A contract for property is an instrument of great importance, since it is the only definite evidence of the actual agreement. It should be drawn in duplicate, each party having one of the copies, and each copy being properly signed and sealed by both parties.

The agreements or clauses which are contained in a contract for property are generally as follows:

A statement of the date of the contract and the names and designations of the parties, the grantor being the party of the first part, and the grantee the party of the second part; an agreement to the effect that, in consideration of the amount which has been paid on account, the party of the

first part will sell to the party of the second part the real estate in question, carefully describing the real estate as in a deed of conveyance ; an agreement that the party of the first part will deliver to the party of the second part a warranty deed with full covenants for the premises (unless there are reasons for omitting certain covenants) upon condition that the party of the second part shall pay to the party of the first part the amount of the purchase-price, describing the manner of payment—in cash, by instalments upon certain dates, by notes, or by mortgages, as the case may be ; a statement of all mortgages, interest, taxes, assessments, and other incumbrances upon the premises, and an agreement as to how these liens shall be paid ; an agreement that the party of the second part will pay the amount of the purchase-price in the manner specified, that the amount which has been paid to bind the bargain shall belong to the party of the first part if the party of the second part shall fail to fulfil the agreement, and that in such case the party of the first part may consider the contract annulled, and sell the property to other parties ; and, finally, an agreement that the contract shall bind the parties and their heirs, executors, and administrators, and assigns. The contract should be taken, as soon as possible after the signing, to the lawyers who are to examine the title, with such other papers as the vendor may furnish for facilitating the examination.

When purchasing improved real estate, the conditions and manners of construction of the buildings must be examined with great care and minuteness ; for it is evident that a bad foundation, a crooked wall, or a dangerous chimney, may transform a promising investment into a very bad one. Such an examination should begin below the foundation walls, by an inspection of the general character of the soil or natural foundation in the particular neighborhood. It may here be noticed that a rocky soil, although apparently a most substantial and desirable natural foundation, may be actually very objectionable for city houses. A soil which is composed of solid rock will involve greater delay and expense in excavating for cellars, and heavy assessments for the grading of

streets, building of sewers, etc. Rocky soils, moreover, will necessitate disagreeable and sometimes dangerous blasting operations until the particular vicinities shall be entirely built up; they are also open to the very serious objection that any leakage from sewers, being unable to filter away through the soil, must stand in pools under the streets, thus tending to cause sickness and epidemic in the neighborhoods. All things considered, perhaps the best possible natural foundation for buildings will be a soil which is sufficiently elevated above the tide-water level, and composed of clean, hard, fine gravel.

Foundation walls, and all other walls, are to be closely examined, in order to detect cracks which may indicate settlements of the buildings; for the same reasons, lintels and sills of doors and windows should not be neglected in the examination. Strength of floors may be tested by walking heavily over the middle portions, and by noticing the effects. Plumbing will require especially careful scrutinies, not only for the purpose of determining the conditions and ages, but also having in view the discovery of pipes which may be in exposed places, where danger of frequent freezing and bursting will be great. All water pipes should be placed as nearly as possible in the centres of buildings, in the side walls where protection against freezing will be afforded by adjoining buildings, or at least in the walls which are upon the warmer or southerly sides of buildings.

In the same manner, entire buildings, including roofs, chimneys, copings, cornices, drain pipes, ventilating pipes, etc., should come under the observations of proposed purchasers, or of competent and trustworthy representatives.

The suggestion that serious defects will be much more likely to exist in obscure or hidden parts of buildings than in conspicuous places will be well worth considering. Therefore the general qualities of the mortar which has been used in the construction of buildings may be tested in obscure corners of the cellars; closer scrutinies may be given to plumbing in cellars and in places which are generally out of sight than to plainly visible parts; and, in general, wherever

there shall be opportunities for covering defects, examinations should be conducted with the greater care.

In many important respects vacant or unimproved real estate will possess advantages over improved real estate, which, for investors who shall be able and willing to lose portions of their incomes temporarily for the sake of obtaining ultimately superior investments must entitle it to a decided preference. For reasons which have already been explained, unimproved real estate generally may be purchased to much better advantage than improved real estate ; it will be much more likely than improved real estate to increase in values ; the danger of being cheated in the purchasing of poor buildings will be avoided by the purchasing of unimproved real estate ; and, when finally improved, the owners may be possessed of substantial new buildings which shall be in all respects modern, suitable for the localities of the real estate, and in accordance with the tastes and preferences of the investors. Moreover, for the purposes of ground-leases, the advantages of which will be explained later, unimproved real estate alone will be available without loss from the destruction of buildings.

At this point, the attention of the reader may be called again to the distinction (here becoming narrower) between investments and speculations. With regard to unimproved real estate, the distinction between investments and speculations, although somewhat finer than in other kinds of property, may be stated in this manner: If unimproved real estate shall be purchased, for the purpose of improving or otherwise maintaining it as a means of obtaining regular incomes, although investors may require increases of values before permanent dispositions of the property can be made, the transactions will be investments ; if unimproved real estate shall be purchased for the direct purpose of selling it at some future time at a profit, although the property may be improved for the sake of obtaining incomes while seeking purchasers, the transactions will be speculations.

Such a special distinction appears to be necessary, because the dividing line between investments and speculations is,

indeed, here so closely approached, that, to many persons, it will be none too clearly defined. And it may be remarked, in passing, that so close an approach will be allowed, because of the fact that speculation in real estate, under certain conditions and careful restrictions, is deemed to be sufficiently within the domain of caution for the proper consideration of certain classes of investors.

It is, however, the intention of the author to omit entirely from this work the examination of the subject of legitimate speculation in real estate, leaving for another time (shall such be offered him), and for another volume (shall such be practicable and within his capabilities), the minute and exhaustive explanations which will be necessary for the understanding of a subject so complicated and so profound—a subject the mastery of which will produce the most brilliant results.

The regular theory with regard to investments in unimproved real estate is, that real estate shall be purchased during times of depression, and held until such times as it may be advantageously improved by the erection of permanent buildings. For the purpose of earning, wholly or in part, the expenses which will be necessary for the holding of unimproved real estate, property upon which are old buildings, which, while they will add nothing to the cost of the property, will pay small rentals, will be desirable. Such buildings can be let for such purposes as small shops, temporary stables, lumber yards, coal yards, etc., at low rentals, if need be, and thus they may be the means of making real estate considerably less burdensome to the owners.

When the proper times for the improvement of real estate shall arrive, investors may erect such buildings as will be best suited to the particular localities, taking care to consider the possibilities of future development and the needs of the neighborhoods, and providing buildings the characters of which shall be considerably ahead of the times, rather than those which may soon become old-fashioned and antiquated. If investors shall be in doubt concerning the styles of buildings which will be most advantageous, or if it shall be desirable

to test the conditions of neighborhoods with reference to the numbers and kinds of tenants which will be available, premises may be advertised to the effect that the owners will improve them to suit tenants ; tenants will be thus obtained before the erection of the buildings, or the probabilities that satisfactory tenants cannot be obtained will be demonstrated. The responsibilities of tenants who shall be obtained in this manner must be assured ; otherwise investors may become possessed of unsuitable buildings in which there shall be no tenants. Moreover, the agreements between investors and tenants, in such cases, should be drawn with great care, covering plainly and thoroughly all points which may possibly be the subjects of misunderstandings or of disagreements.

The practice of erecting one-story buildings, having heavy foundations and walls, in order that other stories may be added when they shall be desirable, will sometimes be of advantage to investors ; although very often such buildings will be found to be so badly arranged as to be almost worthless for the purposes in view. The tendencies, in such cases, which should be studiously guarded against are the providing of insufficient depths of buildings, insufficient heights of ceilings, insufficient spaces or spans between division walls, or, in other ways the cramping of buildings to such extents as to interfere with future enlargements.

When erecting buildings, thoroughly competent architects should always be employed. By this means the appearances and general characters of buildings will be much improved, and difficulties which otherwise may be caused by violations of the rules of health departments, building departments, etc., will be avoided.

In cases of disagreements with inspectors from city departments of health, buildings, etc., a common practice among builders is to bribe the inspectors, generally directly, sometimes indirectly, to pass over apparently unimportant violations without interference. Unfortunately, it cannot be denied that a large proportion of the inspectors of city departments are not only willing thus to betray their public trusts, but

also often attempt, by threats (direct or implied) of making trouble for builders, to blackmail those over whom they are able to exercise a temporary authority. It is also unfortunately true that instances of adequate punishment of such offences are extremely rare.

The authority which is given by the statutes to these departments, and to their inspectors and officers, is generally broad and discretionary, and litigation with the departments will often result in the defeat of private citizens. Nevertheless, the authority of the city departments is by no means sufficient to compel an honest person to adopt dishonest practices. The honorable, and in the end the advantageous, course which should be chosen, more especially by investors, will be to comply strictly with the rules of the various departments, and to stand firmly upon legal rights if attempts at blackmail shall be made.

In the construction of buildings for investment purposes, perhaps even to a greater extent than when buildings are to be used for other purposes, it is important that only builders and contractors of established reputations and responsibilities shall be employed. In theory, owners are presumed to have considerable numbers of estimates, from different builders, for the construction of proposed improvements, and to sign contracts with the lowest bidders. This theory will prove to be practically satisfactory only when the estimating parties shall be equally competent and responsible. The better rule, in the majority of cases, will be to allow only satisfactory builders to estimate upon proposed buildings, and, even in such cases, after the estimates have been compared, to consider, not only the relative amounts of the estimates, but also the relative merits of the builders. A poorly constructed building will not be cheap at any cost; a building constructed in the ordinary manner will be cheap only if obtained at a low figure; a first-class, exceptionally substantial building may be cheap at a cost which is considerably higher than the average. Builders who are accustomed to doing cheap, poor work, at low figures, and builders who claim to be able and willing to do either good or poor work,

according to requirements, may wisely be dispensed with, and such contractors as will not do poor work under any circumstances may well be chosen. For the purpose of selecting builders of the latter kind, the best possible references will be lists of buildings which have been previously constructed by the particular builders; inspections of such buildings will often give all the information which may be necessary in this important respect.

The construction of a building will require the employment of several kinds of tradesmen (carpenters, masons, plumbers, iron-workers, etc.), and the contracts for the work may be made separately with each, or there may be a single contract between the owner and the builder, in which case the builder will make sub-contracts with the necessary parties, and will assume a general responsibility for the whole work. The former method is considered by many to be the better, for the reasons that it will give to owners better opportunities for selecting satisfactory parties for all the different kinds of work, and that direct dealings with all parties will tend to reduce expenses. The method of the single contract will evidently prove to be the simpler. It will also be less troublesome to owners; there will be less chance of annoying complications and misunderstandings than when there shall be several separate agreements; and, in case of difficulty of any kind, the necessary responsibility may be more easily determined. All things considered, probably the method of separate contracts will prove to be more advantageous for such owners as shall be possessed of the necessary energy and ability, and shall be willing to devote considerable time and attention to the matters; while, for the majority of owners, the more satisfactory proceeding will be the making of a single contract with a first-class builder, with the understanding, however, that all sub-contractors must be, in all respects, satisfactory to the owners.

With regard to the general styles of buildings which will best suit the majority of tenants, it may be said that buildings having well proportioned, handsome fronts, reasonably wide and high entrances, stairways, and halls, and an

abundance of light and ventilation will always be preferred by the better class of tenants. Office buildings should be provided with convenient bulletins or directories for the easy locating of offices, and with all the modern conveniences, such as elevators, steam heat, etc., which the particular localities will warrant; stores should have large and conspicuous show windows; and buildings which are designed for special purposes should be, in all possible respects, well adapted to the purposes.

Substantial stone, brick, or iron buildings, obviously, will be of the most enduring characters; and fronts which are not highly ornamental, and which are, to a reasonable extent, flush—that is, without heavy or extensive projections—will be more economical and enduring than others. Iron fronts will be less likely to be injured by the affixing of signs, because of the difficulties in the way of driving nails and hooks; fronts which are constructed of brick may be repaired, by the replacing of broken parts, more easily than others; and fronts of soft stone, terra cotta, etc., will, for obvious reasons, be poorly adapted to the purposes of business buildings.

Other considerations which will prove to be useful to owners of real estate which it shall be proposed to improve, are the arrangement of entrances and doorways in such manners as to guard against defacement; the arrangement of plumbing and water pipes with a view to the prevention of freezing, and with proper means of reaching the pipes for purposes of turning off the water and of making repairs; and the disposition of heating apparatus, steam pipes, boilers, flues, etc., which will best guard against the dangers of fire, and will, therefore, be the means of reducing the rates of fire insurance upon the buildings.

The methods of reasoning by which the probabilities of increases in the values of real estate must be determined, are complicated by the elements of uncertainty, which are attendant, to a greater or a less degree, upon all considerations which involve future events. As a proposition purely abstract, it may not be denied that the future, with respect to all things, is mysterious and uncertain. But investors must

give to this truth only brief contemplations, for the reason that improper dispositions towards timidity, which will uniformly result in disadvantage and lost opportunity, must be avoided. All considerations with reference to the subject of investments must be based upon the presumptions, not only that an unlimited future is positively assured, but that the events of the future will follow fixed and definite rules—rules which have long since been established, and which, consequently, have determined, for our instruction, the events of the past.

With regard to investments, then, the ability of looking bravely into the future will result, as a matter of course, from a faithful and judicious study of the past ; it is therefore our present business to discover, in this manner, the rules upon which future advances in the values of real estate will certainly depend.

The first direct cause for an increase in the value of real estate is an increase in the demand for real estate, or a voluntary increase in the surrounding population ; and the first direct cause of a voluntary increase in the population of a particular neighborhood is an exceptional opportunity for making money, or a natural advantage for business purposes.

In order that real estate, which shall be purchased as an investment, shall fulfil entirely the conditions by which the necessary margin of safety will be obtained, the rule of causes, which has been stated, will require that the real estate shall be situated in a neighborhood or locality wherein the amount of business, and consequently the population, will certainly increase. If this increase shall be rapid, the increase in values will be also rapid ; if the increase in population shall be spasmodic and irregular, the increase in values will be of the same character ; and if the increase in population shall be slow and steady, just so slowly and steadily will the values of real estate increase.

In the investigation which at present occupies our attention, the first subject, which must be given a careful consideration, is the geographical situation of the locality which is to furnish the desired real estate ; and by this is meant the

situation with reference to large and extended portions of the earth,— the situation with reference to all parts of the earth, far or near, which may have any influence upon the particular locality.

If the chosen locality shall be situated upon the seaboard, the situation, with reference to distance, direction, and advantageousness of ocean courses, must be such as to afford facilities for commerce and intercourse with well-settled and extensive portions of an opposite continent. There must be ample offings, open for navigation during large parts of the year ; large and safe harbors ; extensive shore lines and facilities for docks and wharfs ; wide and easy channels, or the possibility of providing them with reasonable expenditures ; natural advantages for transportation along the coasts and into an interior country which will require such a business—in short, the situation must be well suited for a receiving and distributing point for extensive portions of the earth. And in all these respects the geographical situation must be such that no other situation will at any time be able to take away its business, and retard or prevent its growth, by surpassing it in preponderating natural or acquired advantages.

If the particular locality shall be in the interior of a country, the geographical situation must be such as to make it a natural receiving and distributing point for an extensive section, which promises, by density of population, and large and permanent industries, to furnish the required market, and the required capabilities of production. The locality may be situated at the head of easy river or lake navigation, having a section of country which shall be rich in mineral products, or of special fertility of soil, adjacent upon all sides ; the locality may, because of the topography of the surrounding country, be such that future railroads, canals, and other transportation routes must centre in it, or pass through it ; or it may be situated upon an established and extensive line or course of transportation, at such a point as to require transfers of cargoes, or the furnishing of supplies and repairs of extensive and important characters.

For the purposes of strict investments in real estate, this particular line of investigation need be carried no farther. Sufficient suggestion, in this respect, has been offered for the guidance of conservative investors in real estate; and further investigation, looking minutely into details, belongs properly to the subject of legitimate speculation.

Strict investments in real estate, which will depend, for necessary margins of safety, upon future increases in values, should be made only in large cities; or at least, only in cities which have already become established beyond question as active, permanent business places.

The process of reasoning by which these qualities are to be determined may be indicated in the following manner :

Having (by close inspection and observation in the business districts of several cities, and by a careful noting of the apparent magnitudes of various kinds of business, of the quality and extent of business buildings, and appliances, and of the general appearances of business activity) determined upon one particular city which shall seem to fulfil all the present requirements, a study of the past history of the city must be made for the purpose of discovering the practical reasons for the city's present size and business activity—the causes which have produced the city. An investigation of this kind will prove to be by no means a burdensome task. Evidences, natural and artificial, of the business prosperity of passed years, will not be wanting, and these, together with facts which may be obtained from written history or authentic tradition, will, in most cases, prove to be sufficient. Thus, if the particular city shall be already a thriving seaport, the geographical location, the harbor, the docks, and warehouses, considered in the light which has already been suggested, and in connection with the city's history, showing that the city has long since successfully obtained and retained a large share of the world's commerce, will easily solve the problem. If the city shall be situated in the midst of a great mineral district, the surrounding mines, the furnaces, the smelting works, the factories, the storage buildings, and the railroads will quickly indicate the lines upon

which the city's history will be found to have developed. If the city in question shall be a milling centre, or a distributing point for metals, coal, grain, agricultural products, or manufactured articles, the facts will appear at once to observant investors, and a brief study of the city's history will confirm the natural opinions, already clear, as to the causes, or the preponderating causes, of the city's growth.

This fact having been satisfactorily established, the next inquiry, in the process of reasoning, must be as to the permanent character of, and consequently the certainty of increase of, the business of the city. The seaport must retain and increase its commerce against all rivals; the city which shall owe its existence to surrounding mineral lands must establish the facts that the particular valuable mineral will not soon be exhausted, and that no other location shall possess advantages which may, at some future time, rob the city of its business prosperity; the milling city, the grain city, and the manufacturing city must show conclusively that their advantages and facilities are such as will assure to them, beyond doubt, the indefinite maintenance of their supremacy—in brief, the preponderating causes of the growth of cities must be continuing causes.

The methods by which the problem of permanence is to be correctly solved will, in the majority of cases, suggest themselves spontaneously to investors. The necessary knowledge, generally, must be obtained from actual examinations of the sections of country which surround cities in which it shall be proposed to make investments, and by the study of maps and descriptive writings. In the case of cities which have been built up by surrounding mineral lands, agricultural lands, or grazing lands, the probable permanence of the particular kinds of business may be determined only by actual examinations; while in cities, the permanent businesses of which shall depend mainly upon the question of whether other cities may, at future times, deprive them of their business prosperity, the knowledge which is to be obtained from studies of maps and of local descriptions will prove to be of great value.

All questions with regard to the particular city, within or near which to make investments in real estate, having been satisfactorily answered, the next consideration must be that investments shall be made in the sections, or localities, in or near the chosen city, which will improve most regularly and most rapidly; or, in other words, in the localities in or near the city in which the values of real estate will regularly and rapidly increase. And for the purposes of this consideration, the first guide will be a study of the topography of the particular city, in connection with the explicit suggestions which are contained in this and in the preceding chapter of this work. Evidently, the districts of a city which lie beyond the entirely built-up portions, will, in the majority of cases, prove to be the general localities required; for such districts are in their infancy, and must furnish the principal future growth of the city. Whether the best growth of the city will be in one direction or in another will depend to a great extent upon the topography of the city. If one end of a city shall be broken, hilly, and rocky, while the other end shall be level and easy of access, it will not be difficult to predict a better and a more rapid growth in the latter direction; if a city shall be located upon a hillside, the growth will be along the easy lines, rather than up the difficult hills; if a city shall be situated upon an island, the growth must necessarily be confined to the limits of the island until the island shall be filled up with buildings. So the growth of a seaport will be first along the harbor shores; a city which shall be dependent upon river navigation, or canal traffic, will tend to spread out in lines along the river or canal; and a city which shall be a large receiving and distributing centre will extend more rapidly along the lines of transportation, or along the portions where, because of easy topography, the future lines of transportation must be.

A general tendency among all kinds of businesses appears to be to concentrate, each kind in a single locality, because of special advantages, and for the purpose of establishing widely known special business sections. Nearly all large cities, therefore, have their financial and banking sections,

their dry-goods and retail-shopping districts, their localities which are mainly devoted to the selling of produce, manufacturing, the publishing of newspapers, etc. And shrewd and observant investors may often foresee such future business concentrations in time to make investments in real estate which will be especially advantageous.

In a similar manner, fashionable residential districts become established, having for their beginnings the erection of one or two expensive residences in neighborhoods which are entirely free from natural objections. For purposes of protection against nuisances, the concentration of fashionable residences in certain localities will have evident advantages ; it is also evident that there will be natural desires, on the parts of people of wealth, to surround their homes with residences of similar characters. It may be said that this tendency is one of the surest agencies for the enhancement of real estate values.

Workingmen's houses and tenement houses will naturally spring up in sections where building lots will be cheap, and within easy access to manufacturing districts and similar parts of cities ; while residences of a better quality will always seek to avoid noisy and disagreeable business sections, and fashionable residences will often establish themselves in sections which may be so situated (on high ground, or in somewhat inaccessible places) as to preclude the possibility of future unpleasant businesses in the immediate neighborhoods.

The suggestions which have now been made, supplemented by those with regard to especial characteristics of neighborhoods, such as health, soil, drainage, etc., which are contained in the preceding pages of this volume, will prove to be sufficient to induce the thoughtful, reasoning, and inquiring disposition which leads generally to success ; it will evidently be impossible that they shall be adequate as literal rules, the simple routine observance of which will be in all cases sufficient.

Having now reached the discussion of the second and remaining requisite of safety in real estate investments, to wit : that the security shall be within the control of the investor,

it will be evident, without argument, that this requisite will be satisfied perfectly only when investors shall be the sole owners of their securities. This condition of sole ownership, the importance of which has been already explained, will require an especial exposition in connection with the subject of real estate, for the reasons that, owing to the peculiar nature of real estate, joint ownerships will be more common than in cases of personal property, and that an actual division of real estate among several owners, for the purpose of giving each a full ownership of a specific portion, will not always be a simple matter.

The natural and proper desire that valuable real estate shall remain in the families of investors indefinitely, and the natural and proper desire that all children of investors shall be equal heirs or devisees, will result often in joint ownerships (among all the children of deceased investors) of the real estate which shall be owned by investors at the times of their deaths, the real estate being commonly of such a character as to preclude equitable divisions among the heirs in severalty.

In this manner certain parcels of real estate become the joint property of several, and a further descent or devising, which shall be due to the deaths of one or more of the joint owners, will still further complicate the various interests.

In order to illustrate this somewhat difficult state of affairs we may assume a case as follows :

Suppose that Mary J. Doe, widow, shall die possessed of one valuable piece of real estate upon which is erected a single large office building ; that there shall be two children, John, married and having three children, and Jane, married and having two children, John's wife and Jane's husband being living ; and that, according to the laws of descent, or Mary J. Doe's will, the children John and Jane shall become equal joint owners of the real estate. Expressed in terms of their interests in the real estate, John and Jane each will own an undivided one half interest. Let us now suppose that John shall die without leaving a will. By this single death, the interests in the real estate in question will become of the

following somewhat complicated characters : Jane will have an undivided one half interest in fee. The widow of John will have a one third of one half, or an undivided one sixth interest, for life. Each of the children of John will have an undivided interest which is equal to one third of one half less one third, or a one ninth interest in fee, and one third of one third of one half, or a one eighteenth interest in remainder after the death of John's widow.

Suppose, now, that one of John's children (James) shall die intestate leaving a widow and three children, the widow of John still living. The dower of James's widow will be equal to one third of one ninth, or a one twenty-seventh interest, for life, and the interest of each of James's three children will be equal to a two eighty-first interest in fee, a one fifty-fourth interest in remainder, after the death of the widow of John, and a one eighty-first interest in remainder after the death of the widow of James.

If, now, we suppose the net annual rentals from the real estate in question to be thirty thousand dollars, the annual shares of the various owners will be as follows :

Jane	\$15,000 00
Widow of John.....	5,000 00
John's children, each.....	3,333 33
Widow of James	1,111 11
James's children, each.....	740 74

If the taxes upon the real estate in question shall amount to three thousand seven hundred and fifty dollars per year, the portions which must be paid by the several owners will be :

Jane.....	\$1,875 00
Widow of John.....	625 00
John's children, each.....	416 67
Widow of James.....	138 89
James's children, each.....	92 59

If a bill for repairs, amounting to two hundred and thirty-four dollars and forty-eight cents, shall be presented, it must be paid by the owners in the following amounts :

Jane	\$117 24
Widow of John	39 08
John's children, each.....	26 05
Widow of James.....	8 69
James's children, each.....	5 79

It will not be doubted, after a perusal of these calculations, that in all cases of such complicated ownerships of real estate the possibilities of disagreement and discord among the different owners will be so great that they may be classed almost as foregone conclusions. Differences of opinion as to the desirability of mortgaging, improving, or selling jointly owned real estate, or differences with regard to agents, characters of tenants, amounts of repairs, insurance, etc., will very often lead to unpleasant and expensive partition suits, for the purpose of dividing the real estate, or the proceeds from its sale, among the various owners.

Suggestions, having in view the prevention of conditions such as have been here described, will be made in the chapter upon the subject of wills. In so far as an investor, in the first instance, shall be concerned, the difficulties which are now under consideration may be easily avoided by making all investments on one's own account, leaving joint or partnership transactions to those who must learn by experience what may be more easily learned by suggestion and by observation.

But there are many cases in which there can be no choice as to the kinds or amounts of interests in real estate. The interested parties must then accept the conditions, however complicated, and endeavor to reduce, by the simplest possible means, the joint ownership of the many to the separate ownerships of the individuals, or, at least, to overcome the difficulties by the simple means which will here be explained.

Where there shall be several owners of valuable real estate, which, by reason of its unimproved condition, or the divisible characters of the buildings, may be actually divided *pro rata* among the owners, without injury to the interests of the owners, such a division, to be made by amicable agreement, should be earnestly sought. If a division which will give

to each owner a separate portion of the real estate cannot be made, an understanding should be reached by which the division may be carried as far as circumstances will allow ; that is, an attempt should be made to reduce, by friendly agreements, the number of owners of each separate plot to the smallest possible. Thus, if a certain plot of land, consisting of five equally valuable vacant lots, shall belong to five joint owners, whose interests are identical, the real estate may be divided among the five owners by simply executing such deeds of conveyance as will give to each owner a single lot; if the particular real estate shall consist of a plot of land upon which there are two separate buildings of equal value, and the title shall be held by four persons in common, deeds may be executed which will reduce the number of owners of each separate lot and building to two. And in cases of more complicated natures, divisions should be attempted by means of agreements, to the effect that certain owners shall pay certain amounts to others, the amounts being based upon calculations of the exact values of the different interests.

A method of managing real estate which shall belong to many joint owners having different interests,—a method which will often prove to be a satisfactory means of retaining valuable real estate,—consists of formal written agreements, on the parts of all the owners, giving to one or more of the owners sole charge of the property, and requiring the managing owners to receive the rents and profits, to pay the taxes and other charges, to make the necessary repairs, and, at stated periods, to render accounts to all the owners. Agreements of this kind should be full and explicit. They should state the names and interests of all the parties, and the proportional share of each in the profits and expenses ; describe accurately the real estate ; specify the exact authority and duties of the managers, their names, and compensations, the durations of the agreements, and the events and means by which they may be terminated ; provide for the times and manners of rendering accounts and of paying shares of profits ; and give general descriptions of the amounts of repairs which are to be made, or of the conditions of repair and

good order in which the premises are to be maintained. Such agreements should generally be so drawn as not to extend over long periods of time. One, two, or three years will probably be found to be advantageous periods, at least until the experiments have successfully designated the proper managing owners and other necessary conditions.

Managing owners, under agreements such as have been described, may be required to furnish bonds for the proper performance of their duties, although ordinarily their interests in the particular real estate should be sufficient guaranties.

With regard to questions as to which of several owners should be chosen as the managing owners of real estate, under the conditions which are under consideration, those who shall be best suited for the duties, because of business experience, ability, and integrity, will naturally be suggested; and, these requirements being equally satisfied, the owners having interests which shall be intermediate in amounts, may well be selected, since owners having the largest interests may tend toward too great an economy in matters of repairs and of expenditure, while those having the smallest interests may desire to go to the opposite extreme.

If, in a particular case, an agreement, of the nature which has been suggested, shall prove to be unsatisfactory or impossible of consummation, propositions may be made by certain of the owners to buy out certain others at specified prices; the property may be placed upon the market for sale at a price which shall be agreed upon, in writing, by all the owners; or it may be sold, upon a similar agreement, at public auction.

Finally, if all attempts to arrange matters in an amicable manner shall fail, and the difficulties of the situation shall become too great for solution by any other simple means, a partition suit at law must be brought without delay.

Legal proceedings of this kind are generally expensive and tedious, the costs and counsel fees which are allowed by the courts being in accordance with the complicated nature of the proceedings and the care with which they must be

conducted ; they should, therefore, be avoided whenever avoidance shall be possible without too great sacrifices to the cause of amicable settlements. Described in as brief a manner as is possible, a partition proceeding is a suit at law which is brought by one or more joint owners of real estate against the others for the purpose of obtaining a judicial division (partition) of the property. The final result usually is the sale of the property at public auction, and the distribution of the proceeds, after deducting costs and expenses, among the former owners, *pro rata*. It will prove to be advantageous to all the owners, therefore, if such proceedings shall be so timed as to bring the auction sales at periods when values of real estate will be at the highest points. The various owners should attend the auction sales, prepared, if possible, to bid in the valuable properties, if such a course shall be necessary to prevent sales at very low prices.

In order that real estate shall be within the control of the owners, it must be free and clear of all mortgages and incumbrances, or at least so lightly incumbered as to be easily managed without the possibility of loss through foreclosures which may be brought at times when the negotiation of mortgages will be very difficult, or even impossible.

The theory that improved real estate will pay larger profits to the owners if it shall be heavily mortgaged, at low rates of interest, has been propounded, and has many supporters, principally in that class of so-called investors which, trusting to activity, good fortune, and ingenuity to remove all difficulties, is willing often to accept improper risks for the sake of immediate advantages.

The mathematical principles upon which this theory is based may be explained in this manner :

Improved real estate (well and fully rented) will return rentals which are considerably greater than the regular amounts of interest upon sums which are equal to the values of the properties ; and such results will be necessary because of the expenses which, in addition to the net incomes to the owners, must be paid out of the rentals. If, therefore, an owner of improved real estate shall be able to borrow a large

amount of money upon his real estate, and shall neglect the regular provisions for repairs and sinking fund, the rentals from the real estate will, evidently, for a time at least, furnish a large percentage of profit, and the owner will receive a temporary benefit therefrom. Thus, to illustrate by means of figures: we may suppose a piece of improved real estate to be actually worth fifty thousand dollars, and that the gross annual rentals shall amount to forty-five hundred dollars. If we allow five hundred dollars for the annual taxes, five hundred dollars for the annual sinking fund, and seven hundred dollars for all other annual expenses, the amount of the net annual rentals will be twenty-eight hundred dollars, or somewhat over five and one half per cent. upon the amount which has been invested. If, now, we suppose that the owner has been able to obtain a loan of thirty-five thousand dollars, at the rate of five per cent. upon the real estate, and that he shall neglect altogether the sinking fund, and shall reduce the annual expenses to the sum of eight hundred dollars; the net rentals will amount to nineteen hundred and fifty dollars (the gross rentals, less seventeen hundred and fifty dollars interest on the mortgage and expenses), or thirteen per cent. upon the amount of fifteen thousand dollars which the owner has invested in the real estate.

In cases of this kind it is evident that owners must calculate upon selling their heavily burdened properties before the lack of repairs shall produce plainly visible results, and before the neglect to provide for sinking funds shall place the owners in embarrassing positions. It is also evident that the necessity for such calculations will be sufficient, at once, to condemn both the theory and the practice.

But, it may be suggested that the theory, as it has been explained, is an extreme theory; that by taking properly into account the necessary repairs and sinking funds, and otherwise proceeding upon the theory of beneficial heavy mortgages, investments may be made, which, although not capable of yielding such large returns as in the case which has last been mentioned, will still be able to provide larger incomes than the free and clear method. If, from the income

of the illustration, we deduct the amounts which have been allowed for the sinking fund and for all expenses, we shall thus find that the investor will obtain a net rental of ten hundred and fifty dollars, which will be equal to seven per cent. upon the amount of fifteen thousand dollars which has been invested.

At first glance, then, the modified method of heavy mortgages may seem to be a feasible one. A brief examination will, however, be sufficient to show that the elements which are necessary for the success of the method will demand entirely too many hazards for the consideration of careful investors. The uninterrupted renting of the premises, without vacancies, and without loss of rentals from other causes; the certainty that the amounts of rentals will not decrease as the buildings shall become old and out of repair; the assurance that no unforeseen events will cause the values of the real estate to decrease, or the estimated expenses to increase; the knowledge, beyond the possibility of mistake, that the mortgagees will not be pressing in their demands at any time; and the ability to pay off or otherwise negotiate the heavy mortgages at times of financial depression—these requisites, a failure of any one of which will prove to be disastrous, approach so nearly the impossible that they will not fail to condemn the theories of the believers in heavy mortgages.

The actual facts, moreover, cannot be denied. Many valuable pieces of real estate have been lost to the owners through foreclosures, which have been forced upon them at times when it has been utterly impossible for mortgagors generally to repay or to replace heavy loans; and, in like manner, many believers in the theory of beneficial heavy mortgages have been reduced from the positions of those having equities in valuable real estate to those of ruined speculators, who not only have been deprived of all their property, but are also burdened with judgments for deficiencies beyond the possible hope of recovery.

Still another requirement of the rule that the security must be within the control of the investor, is that real estate shall

be so located that it may be easily watched and inspected, at frequent intervals, by the owners, or by trusty agents. Taxes must be watched, in order that owners may be able to protest against, and to take timely measures to prevent, unjust and unequal valuations; special assessments must be kept in view, and anticipated, in order that they may be kept within proper limits; possible condemnation proceedings must not be allowed to go by default for want of knowledge and information concerning them; in certain kinds of real estate, squatters must be kept off, lest they become the owners through long occupancy and adverse possession; frauds concerning the amounts of rentals, repairs, etc., must be guarded against; and, in general, owners must be kept at all times well informed with regard to the conditions of their properties and of the surrounding neighborhoods. Accordingly, investors in real estate must make frequent visits to their properties, whether the properties shall be near the homes of the owners or far away. And, if it shall be impossible properly to attend to this precaution at considerable distances from their homes, or to accomplish the necessary results by the employment of agents, whose abilities and honesty shall be beyond question, investors must necessarily make their investments of this kind near their homes, although they may thus lose the benefits of extended fields of investment.

The final consideration with regard to investments (namely, that they shall return fair and regular incomes) remains to be discussed and to be applied to the special case of investments in real estate.

The income from real estate being the difference between the rents and profits, upon the one hand, and the expenditures upon the other, it is evident that the amount of income from a particular piece of real estate will reach its theoretical maximum only when the rents and profits shall be at their highest possible points, and the expenditures shall be at their lowest. But, for general reasons which have been already explained, and for special reasons which will be referred to in the proper place, neither of these conditions is thought

to be desirable in its extreme aspect. In accordance with the principle that incomes must be fair and regular, rather than the highest possible, the statement of these two conditions must be modified and expressed in the following practical manner :

In order that real estate may return fair and regular incomes, it will be necessary, first, that the rents and profits shall be as high as shall be consistent with regularity and the prosperity of tenants ; and, second, that the expenditures shall be as low as shall be consistent with the proper conditions of the premises. Since the latter condition may be considered more briefly than the former (which must include the entire subject of landlord and tenant) it may conveniently be treated and disposed of at once.

The subject of expenditures upon real estate (by which is meant regular annual expenditures for the purposes of meeting public charges against the real estate, of keeping the premises in proper repair and security, and of securing and collecting the rents and profits) may be conveniently divided into four sub-divisions, namely: taxes and assessments; repairs and ordinary expenses ; insurance; and commissions. These it will be necessary to examine separately and in regular order.

The general theory upon which taxes may be levied and collected by the public authorities of States, counties, cities, etc., will be understood by means of the following statements:

First, it is evident that money must be obtained from some source for the necessary expenses of maintaining governments, and law and order, and the necessary funds must be taken from those who are able to pay them; and second, the benefits which are derived by different persons from the regulations of government, of law, and of society, are presumed to be directly in proportion to the material conditions of the persons; those having the most at stake (or having the most property) receiving the greatest benefits, and, therefore, that the amounts of money which must be contributed by different persons toward the necessary public expenses should be in the same proportions.

It will not be necessary to discuss here the logical truth or falsity of these statements, according to the actual state of public affairs, at the present time, in our country. The fact remains that taxes must be paid, and the necessary questions therefore are : how shall the general taxes be kept within proper and reasonable limits, and how shall the rights of the individual taxpayer be secured and maintained ?

Before considering these questions, however, it will be beneficial to give a brief explanation of the method by which the amount of the general tax and the tax rate, for any given locality, are determined. In principle this method is simple, though in detail it is necessarily complicated. The regular total expense of a municipal government is evidently a known quantity, and, with such allowances for uncollectable taxes, and other contingencies as experience has shown to be necessary, the amount which shall be necessary to pay the annual expenses may be ascertained without difficulty a year in advance. This having been accomplished, each parcel of real estate within the tax district is appraised or valued by the public officers, and likewise the personal property which is subject to taxation. The amount which must be raised by taxation is then apportioned *pro rata* upon the taxable property, the total amount of the tax, divided by the total valuation, giving the tax rate or percentage of taxation.

In the city of New York, for the year 1896, the tax rate was determined in the manner which has been explained by means of the following calculation :

The total amount of the tax to be raised was determined to be \$44,900,330.28, and the total amount of taxable property, or the total valuation, was \$2,106,484,905. The former amount, divided by the latter, will give a quotient of 0.21315, or 2.14 per cent., which was the tax rate in the city of New York for that year. If, under these conditions, the valuation of a certain piece of real estate, for the year 1896, was \$25,000, the tax upon the property would have been 2.14 per cent. of \$25,000, or \$535.

From this explanation it will be seen without difficulty that the valuation of the taxable property and the tax rate

are only the quantities which make up the actual amount of the tax, and that the all-important factor in the calculation is the amount of the municipal expenses.

The ignorance of the masses upon this subject has often been taken advantage of for questionable political purposes, the valuations (which in particular cases are known only to the individual taxpayers) being increased in order that the tax rates (which are common to all taxpayers, and which are the common talk of the communities) may be decreased, and the people deceived by the idea that the taxes have been actually lowered by the economic and wise administration of the political party which is then in power. The one important item in the question of taxation is the public expenditure of the citizens' money, and to this the attention of taxpayers and of honest citizens generally must be directed.

With regard now to the first of the important inquiries which have been above propounded, it cannot be doubted that every taxpayer has the general right to demand that the public moneys shall be honestly expended by the public officials. This right is not confined to a mere privilege of protest against public fraud and extravagance, but authorizes the taxpayer to look into the acts and proposed acts of public officials; by the aid of the courts, to prevent frauds and extravagances; and to punish the public officials upon whom the responsibility for such acts shall be fixed.

It is not to be denied that there is, in almost every State and city in our country, great or considerable waste and theft of the public moneys — that corrupt and fraudulent administrations of public affairs exist to a greater or a less degree almost universally. A comparison of the tax levies in the larger American cities with those in the larger European cities, and a consideration of the exorbitant costs of public improvements in American cities generally, will probably warrant the assertion that an honest and economical management of public finances would be able to reduce the amounts of the tax levies in our large cities to approximately one half of their present proportions. Nor can it be denied that the prevention of such a deplorable state of affairs will be

attended with such difficulties as to make it impossible of a perfect accomplishment. Nevertheless, the prospect must indeed be hopeless if we must refuse to believe that a continued and well-directed effort on the part of taxpayers generally will greatly lessen this rapidly increasing and already alarming evil.

This existing condition of public affairs in the United States may be explained generally by the following statement of facts :

First, public officers as a rule are not responsible business men and taxpayers, but irresponsible politicians, whose only business is to make all the personal profits which possibly can be made out of their offices ; second, public officials are, in too great a measure, free to do as they please, without proper restraint by the people directly ; and, third, when abuse of public trusts shall become so flagrant as to create a public demand for the prosecution of the offenders, such prosecutions partake almost of the nature of farces, and if convictions shall chance to result, political criminals are often treated with disgraceful lenity.

Such are the evil elements which are everywhere apparent, and which, although they may not be entirely eliminated, may be minimized and kept within certain bounds by an unceasing and uninterrupted action on the part of good citizens generally. For the accomplishment of this purpose, the importance of which cannot be overestimated, every honest and order-loving person must lend at least a moral aid, at all times being fearless and outspoken in condemnation of public dishonesty and extravagance, and importunate in demands for severe penalties and rigorous prosecutions in all cases of negligence, incompetence, or corruption in public office.

High taxes upon real estate invariably work hardships and heavy burdens to that class which constitutes a very large majority of the citizens in every community—that is the rent-paying class—without furnishing corresponding benefits to any, unless it be to unscrupulous or over-paid politicians. For, in every regular case, high taxes must result in high rents, and the burden of the taxes must therefore fall upon

the tenants ; while the landlords, whose rentals will be calculated upon the basis of certain percentages upon the amounts which have been invested, in addition to the expenses of maintaining the properties (of which the taxes will be the principal) will receive no benefit from the high rents. Tested by all the legitimate conclusions of logic, as well as by the practical results of ordinary experience, these statements must be generally true. But should they, nevertheless, be doubted, a comparison of tax and rent statistics of various cities, will show, beyond chance of misapprehension, that the actual facts fully sustain the logical conclusions.

A widely prevalent, and likewise, an injurious and an erroneous theory, exists among tenants, to the effect that their interests and benefits are, in the main, contrary to those of landlords — that an injury to landlords, in general, will rather benefit than rebound upon tenants. Exactly the reverse of this theory is undoubtedly true. If tenants shall vote for, and use their influences for, heavy public expenditures and consequent high taxes, they will be certainly and directly responsible for the increases in their own rents which must eventually result ; if tenants shall abuse the premises which they occupy, and thus put their landlords to heavy expense for repairs, they are indeed enlisting in the ridiculous cause of increasing the landlords' necessary allowances for repairs, and consequently their own rents ; and if tenants shall be unreasonably slow with their payments of rents, or shall otherwise cause trouble or loss to the landlords, they may properly blame themselves if they shall find increasing tendencies among landlords to make larger allowances for loss of rents and cost of collections. It appears, therefore, that landlords and tenants will be mutually benefited if, instead of imagining a contrariety of interests, they shall work steadily and heartily together for the attainment of low taxes and moderate rents.

If, in any given locality, the evils which have here been mentioned are to be systematically attacked, one of two methods must be pursued. Taxpayers, individually and independently, must carefully watch public officials and take the

proper measures to prevent fraudulent and extravagant expenditures of public funds ; or the same objects must be accomplished by the concerted action of taxpayers generally. Unfortunately the former plan seems to be chimerical, inasmuch as it must pre-suppose, to a certain extent, a prevalent spirit of philanthropy among taxpayers, which will be able to induce the individual to proceed, regardless of the fact that benefits will be general while the expenses will not be shared by the public. Equally unfortunate is the fact that associations of taxpayers seem generally to have been unsuccessful in the accomplishment of the desired ends. It may profitably be suggested, however, with reference to the former plan of action, that wealthy and patriotic citizens can scarcely devote their means and their energies to a better philanthropy than the purifying of public affairs for the lasting benefit of entire communities.

With regard to concerted action on the part of the taxpayers of a particular community for the purposes which are under consideration, the causes of past failures seem to have been a lack of system, a lack of perseverance, and a tendency to allow certain persons, who are desirous of posing before the public as reformers, to draw the associations away from their true aims, and into the positions of associations for the purposes of active political reforms. An association of taxpayers for the purposes which are now in question must be, in all respects, a systematic and strictly business organization, having competent lawyers, business managers, watchers and other assistants, who shall be employed to devote their entire abilities to the purposes in view. Such an association must persist fearlessly, steadily, even stubbornly, in its labors and duties, without reference to the sentiments of others, or the aspersions of its many enemies. Every bill, in any way affecting taxes, which shall be presented in legislature, every proposed municipal ordinance or regulation, bearing directly or indirectly upon the subject of taxation ; and, in all, every proposed contract for public improvements, every apparently dishonest or incompetent act of a public officer, must be reported to the association.

investigated ; and legal or other necessary proceedings for the prevention of public frauds and abuses, and for the punishment of guilty public officials, must be unhesitatingly instituted and vigorously pursued to the bitter ends. If, under such comprehensive circumstances, the united determination of taxpayers, assisted by the active sympathy of all good citizens, shall not be able to prevail against dishonest office-holders and their friends, the conclusion of the pessimist—that the inherent dishonesty of the people will, in the end, prove to be unconquerable—can no longer be avoided.

Concerning the individual rights of taxpayers, and the methods by which they are to be maintained and protected, it may be said that an ordinary degree of intelligence and watchfulness will generally be sufficient for the determination of the one and for the successful operation of the other.

The law requires that taxes shall be equal and uniform ; that is, real estate having equal values in the same neighborhoods must be equally taxed ; real estate having exactly twice or thrice the values of other pieces of real estate must pay exactly twice or thrice the amount of taxes which shall be paid by the latter. All tax valuations are open for the inspection of the public, at the proper public offices, and for specified times before the taxes shall be confirmed. Careful and prudent taxpayers will, each year, compare the valuations of their own real estate with those of neighboring pieces of real estate, and will take prompt and energetic measures to maintain the required uniformity of taxes.

If an inequality of valuations shall be discovered, to the injury of a taxpayer, a carefully written statement of all the facts of comparison, with a request for a proper correction of the particular valuation, should be at once sent to the public officers who are authorized by law to correct such errors—the tax commissioners, commissioners of appeals, board of equalizers, etc., according to the nomenclatures of the different States ; and if just and uniform valuations cannot be obtained by this simple means, the desired result must be obtained by means of regular legal proceedings.

In a given locality, taxes are due and payable at the same

time each year. Generally, reductions of the regular amounts of taxes, in the form of rebates, are allowed upon all taxes which shall be paid before certain designated times, or penalties are added to the regular amounts of taxes the payment of which shall be delayed beyond certain times which are prescribed by the laws. Sometimes both systems are made use of. It is therefore directly advantageous that taxes shall be paid at the earliest possible times after they shall have become due and payable.

In general, special assessments are subject to the rules and regulations which govern the regular taxes, with the exception that the former are necessarily irregular and occasional. They must be anticipated whenever the opening of streets, paving, sewerage, and such public improvements shall be proposed, and the methods which have been suggested must then be regularly followed.

Tax bills are to be obtained at the proper times from the public officers for the collection of taxes (according to the practices in different States, the county treasurer, the city treasurer, the town treasurer, the collector of taxes, the receiver of taxes, etc.) upon application in person or by mail, and should be paid by means of checks (certified if required) drawn to the orders of the proper public officers. The bills should be inspected and compared with those of previous years, or with the maps and books in the offices of the tax departments, in order to avoid mistakes in the descriptions of real estate ; the amounts of tax bills should also be verified by computing the correct amounts from the given valuations and tax rates.

The second sub-division of the subject of expenditures upon real estate has been chosen under the title of repairs and ordinary expenses. Concerning the latter, little need be said. They consist of such items as janitors' wages, engineers' wages, the wages of other employees (which, according to the characters of the improvements will be necessary) coal, gas, and material and implements for the use of janitors and other employees. The same care and scrutiny in such matters as are exercised by prudent and judicious

persons in the general management of employees and in the purchasing of necessities will be necessary. Too much of the management of such matters should not be left to the care of agents and janitors, for reasons which will be sufficiently obvious without specific mention.

Bills for ordinary expenses should be carefully examined, and agents and employees should be promptly called to task upon the discovery of over-charges or other discrepancies. The purchasing of articles which will involve considerable expenditures may be advantageously attended to by the owners ; while expenses of less importance must generally be left to the care of agents and other employees.

It may be remarked that a wise and beneficial economy, in the matter of ordinary expenditures, such as are at present under consideration, will be best attained, not by the employment of incompetent agents, janitors, etc., for the purpose of reducing expenses ; nor by the purchasing of inferior materials and utensils ; but by the employment of competent persons at fair compensations, by the judicious purchasing of good and sufficient material and utensils, and by the prevention of frauds and unnecessary wastes on the parts of employees.

With regard to the very important item of repairs to real estate, the first principle must be that repairs must be, in all respects, sufficient for the proper preservation of buildings. Premises must be kept in good repair, else their conditions will become rapidly poorer, and the rentals will decrease in equal ratios.

Covenants, by which tenants agree to make all necessary repairs to the premises which they occupy, are commonly included in properly drawn leases ; the importance of such covenants will be more evident after a study of the chapter upon the subject of landlord and tenant. In practice, however, it will be necessary that landlords shall calculate upon making and paying for all, or practically all, repairs to their premises, notwithstanding the covenants which provide for a contrary manner of proceeding. It may be taken as a general rule, that tenants will not pay for repairs to the

premises of their landlords unless they shall be compelled to do so by process of law, even though they shall have expressly agreed to do so. Aside from the unpleasantness and expense of legal remedies against tenants generally, a further complication often arises from the fact that, in the majority of cases, tenants are irresponsible persons, for whom proceedings at law will present no difficulties. Perhaps, in the majority of cases, therefore, it may be said that the question of repairs, as between landlords and tenants, will become reduced to a seeming paradox — that landlords must insist upon their tenants agreeing to make and pay for all necessary repairs, and must then make and pay for all necessary repairs themselves.

The remaining questions with regard to the subject of repairs are : what shall be the extent and nature of repairs, and how shall they be most economically and advantageously made ?

In the first place, it must be stated, as a practical rule of importance, that all extensive repairs, and all repairs which will involve considerable expense, should be attended to by the owners themselves, whenever such shall be possible. If such matters shall be attended to by agents, the practice among agents (almost as common as it is dishonest and criminal) of arranging with plumbers, painters, carpenters, etc., for the payment of percentages or commissions upon all work which shall be given them by the agents, will be found to militate sadly against the owners' attempts to bring expenditures properly within the limits of economy. Other excellent reasons for the suggestion which has been last made are the carelessness which is often manifest in persons who are dealing with the money of others, and the possibilities that serious injuries may occur to buildings, by reason of extensive repairs the work of which shall be improperly performed.

Theoretically, the repairs which shall be made upon investment buildings must be sufficient to keep the premises always in the same conditions with respect to appearances, and general convenience, or desirability for the purposes for which they are intended. Such a statement follows from the

fundamental principle that rentals and rental values must not be allowed to decline. The same method of reasoning will lead to a higher and more perfect theory: that, in order that rentals shall continually increase, sufficient amounts of repairs must be made to improve continually the conditions of buildings.

But, unfortunately, neither of these theories can be perfectly applied in practice, for there are many elements, making up the rental values of buildings which cannot be governed by the extent of repairs.

Natural wear and tear, old age, modern discovery and improvements which are included in newer buildings, are factors which can neither be neglected nor entirely overcome.

The modified general rule in practice must therefore be that buildings which are used for investment purposes must be given sufficient amounts of repairs to maintain them, as nearly as is possible, in uniform conditions, with respect to the particular purposes for which they are used. Certain kinds of repairs, which are necessary for the prevention of actual decay and dilapidation, cannot be avoided or neglected under any ordinary circumstances. Roofs must be painted and kept water-tight, or the entire properties will in time be ruined; plumbing must be kept at least in good working order; floors and stairways must be kept safe and strong; exposed woodwork and metal work must be kept protected from the weather; and the appearances of premises generally must be kept up by the proper repairing of entrances, doorways, halls, building fronts, and other conspicuous parts.

Obviously, the necessary amounts of repairs will vary greatly in different kinds of buildings, and should be regulated according to the kinds and styles of buildings, in each particular case. Thus, for example, tenement houses may dispense with many kinds of repairs, which will be absolutely necessary in first-class private houses; factory buildings and loft buildings will require very different kinds and amounts of repairs from those which must be given to handsome and pretentious office buildings.

One particular class of repairs to real estate seems to

require a special consideration, *i. e.*, repairs which amount to alterations in the general characters or constructions of buildings. Such repairs or alterations are generally in the form of changes in the arrangements which are made to suit new uses and kinds of businesses; or changes which are made for the improvement of buildings, by the addition of modern conveniences, such as elevators, steam heaters, electric lights, etc. When repairs of the first kind shall be contemplated, it will be necessary to calculate the costs and the benefits, in the form of increased rents, more carefully than in those of the latter kind; for special alterations which are improvements only for special branches of business will result in increased rentals only when tenants who are engaged in the special branches of business shall be obtained and secured, while general improvements of the latter kind, if properly made, will surely be the means of increasing, to a greater or a less extent, the rentals.

The first consideration concerning special business alterations of real estate must be that the increases of rentals shall be sufficient to pay interest upon the first costs of the alterations, repairs to, and extra taxes and insurance on account of, the alterations, and also the annual sinking funds which must be allowed upon the costs of the alterations. If a prospective tenant shall desire special alterations, which probably will be useless after the expiration of his lease, the entire cost of the repairs, together with the interest and other allowances, must be added to the regular rent for the term of the proposed lease. On the other hand, if the usefulness of proposed alterations will outlast the terms or occupancies of the tenants for whom the alterations shall be made, the annual sinking funds must be calculated in the usual manner, by estimating the probable lives of the alterations and by dividing the costs by the number of years which shall be furnished by the estimation. In such a case, the correct provision for the sinking funds which must be added to the regular rent during the occupancy of the special tenant will be simply his own share of the sinking fund — that is, the annual sinking fund, obtained in the regular manner during

his occupancy — leaving for future tenants the making up of the balance.

A second and very important consideration, which will be necessary in cases of special alterations, is the reasonable certainty that tenants for whom the expenses shall be incurred, will occupy the premises, and will pay their rents during the full terms of their leases. Alterations of this kind should not be made unless tenants shall furnish ample securities, or other guarantees for the performance of all their agreements with respect to the premises.

A third and final consideration in cases of this nature may be the permanent effect of the proposed alterations upon the premises themselves. The alterations may weaken the structures of the buildings ; they may involve serious difficulties with building departments, fire departments, or health departments ; they may greatly increase the insurance rates upon the entire premises ; they may be injurious to other tenants ; they may tend to change the characters of the premises, or the business characters of neighborhoods ; they may interfere with future and more necessary improvements ; they may be more extensive and permanent than the buildings will warrant — in short, extensive alterations must be given the same amounts of care and study which will be properly devoted to the erection of entire new buildings.

The general rule with regard to alterations of buildings by the addition of modern conveniences which may have been introduced to the public since the erection of the buildings in which the improvements shall be contemplated, may be stated as follows :

The addition of actual conveniences will result in increases of rentals, provided the improvements shall be suitable in all respects to the premises. If the construction of a building which is to be improved in this manner shall be such that the particular modern convenience cannot be added without producing corresponding injuries which will more than counterbalance the improvement, evidently the building will be better without the proposed change. Such cases are frequently to be found, and the folly of the expenditures is,

in many cases, plainly evident. As examples, may be mentioned the addition of elevators to old buildings, which have been so constructed as to furnish no convenient or practical places for the elevators; the addition of steam-heating apparatus to an old building, the arrangement of which is such that the steam pipes must seriously interfere with necessary head room, space in passages, etc.; the providing of steam power for old buildings, the walls and foundations of which may not be sufficiently strong and firm to bear the shock of moving machinery; and the addition of improvements to buildings, the characters and uses of which will not warrant the improvements—a passenger elevator in a common factory building, for example.

The insurance of buildings and fixtures against loss or damage by fire, which forms the subdivision of the subject of expenditures upon real estate, which is next in the order of our discussion, is a matter of great importance to investors, and, at the same time, one which is commonly passed over, with by no means an adequate consideration, as a positive, though disagreeable necessity.

The fundamental question with regard to insurance—whether or not fire insurance is, in all cases, a necessary, or even a proper expenditure—is not to be decided affirmatively as a matter of course. Since the fact that insurance companies find the business of fire insurance profitable to themselves, at the expense of their customers, must be taken as self-evident, it will be worth the while for investors in real estate to inquire whether they may not receive a legitimate benefit by dispensing entirely with fire insurance, and by thus obtaining for themselves the portions of their incomes which otherwise will go to the insurance companies.

The necessity for fire insurance rests upon the all-important principle of security, insurance being the nearest approach to a perfect means of making secure and permanent the buildings and fixtures by means of which real estate is made to produce incomes. This statement will evidently bring the general subject of insurance within the operation of the familiar rules of investment which have been explained

in the earlier portions of this work. The general rule, therefore, must be that buildings are to be kept fully and continuously insured in the best companies which shall be available for the owners.

But there are special circumstances under which the inquiry, with regard to the necessity of insurance, may be safely indulged and considered by certain investors. Persons of large wealth, whose incomes shall greatly exceed their expenditures, may do away entirely with the somewhat troublesome question of insurance, by assuming all risks of fire themselves, or in other words, by insuring themselves. In view of the difficulties attending the subject, and which will be manifest from the explanation of the principles of fire insurance which will shortly be given, a somewhat more practical analysis of this question seems to be pertinent.

If we suppose the case of an investor all of whose principal shall be invested in a single parcel of land, upon which is erected a single building, the rentals of which shall furnish the investor's entire income, there can be no reasonable question concerning the necessity of insurance against fire, to the extent of the entire cost, or value of the building; for, if uninsured, the destruction of the building by fire will deprive the investor of the principal which has been expended in the erection of, or the purchase of, the building, and, at the same time, of his entire income. Even if the supposed building shall be fully insured, its destruction by fire will certainly involve a serious loss of income from the loss of rentals during the adjustment of the insurance, and the re-erection of the building.

If, now, we suppose that, instead of having invested the entire principal in one lot and building, the investor shall have divided his principal among ten smaller lots and buildings, situated in different places (or at least at sufficient distances apart to be practically out of the reach of one and the same conflagration), the question whether such an investor shall fully insure each of his ten buildings becomes dependent, to a certain extent, upon the amount of the income

which shall be derived from the buildings as compared with the investor's proper expenditures.

If the investor shall live, in a satisfactory manner, and within the rules of economy which have been already explained upon the income from nine of the ten buildings, saving and adding to his principal the income from the tenth (in addition, to be sure, to the regular saving which is required by the rules of economy), we may (with the objection of the possibility of several fires, which, occurring at short intervals, may deprive the investor of more than one of the buildings) reach the conclusion that the investor may do without insurance altogether; and that, with the risks which are ordinarily assumed by fire insurance companies, he may profit, by the saving of insurance premiums, sufficiently to enable him at all times to replace, if necessary, any of the buildings which may be destroyed by fire.

If we assume, in the last proposed case, that the investor shall live (properly within the invariable rules of income and expenditure) upon the income from eight of the ten buildings, the conclusion that all fire insurance may be dispensed with will be reached with less of hesitation; and if we assume that only one half of the ten buildings shall be necessary for the expenditures and regular savings of the investor, the conclusion to dispense with all insurance may seem to be the only rational one. And so this manner of reasoning leads logically up to the rule, before stated, that persons whose incomes shall greatly exceed their expenditures may do away entirely with the question of insurance.

Nevertheless, if there shall be special circumstances, such as the possibility of largely-increasing future expenditures, or adjacencies of buildings which will render easily possible the destruction of several investment buildings by a single fire; or, if investors shall encounter serious doubts as to their exact positions with regard to incomes and expenditures, the safe course of ample insurance must be invariably chosen.

Still another consideration, which, although it has been neglected in the deduction of the general rule, must form a

factor in the more exact calculations to which investors must resort in special cases, is the rate of insurance, or that which results from it, the amounts of the premiums which shall be demanded by the insurance companies.

Owing to the competition among the various insurance companies, at certain times, and, because of agreements between the companies to maintain certain uniform rates, at other times, the rates of insurance, upon the same kinds of buildings, will vary materially from time to time. Thus, within a comparatively few years, insurance rates upon similar risks, in certain cities, have varied to such an extent that the highest amounts nearly to four times the lowest.

Such a state of affairs signifies simply that the actual cost of insurance at certain times will be nearly four times as great as at other times, and this remarkable fact cannot fail to affect conclusions in many cases. As is very generally the case with varying conditions of values and of costs, the results must work most disadvantage and loss to persons who are in poor or in moderate circumstances. Such persons can have no recourse from exorbitant insurance charges. They must insure their properties against fire no matter at what cost, or threaten the very element which forms the foundations of their hopes and fortunes — safety ; while persons of large wealth may enjoy the independence which their fortunate conditions will permit, insuring their properties whenever the rates of insurance shall fall below their estimates of correct values, and declining to insure whenever the rates shall be increased to amounts exceeding these estimates. In like manner, persons occupying intermediate positions with respect to wealth, may, without unreasonable difficulty, determine upon limits of insurance rates beyond which they will not go. Such conduct, on the part of large numbers of real estate owners, will not fail to exercise a wholesome influence upon insurance companies, which, generally unrestricted, in the matter of rates, by the laws, and following the tendencies of the times, appear, at certain times to be approaching that condition of commercial combination the immediate effect of which will probably be injuries to

the public, and the final effect of which will probably be the overthrow of the monopoly-seeking companies.

Stated in a simple manner, a fire insurance policy is a contract between the insuring company and the insured property owner to the effect that the former will pay to the latter any loss or damage by fire which may occur to certain specified property, between certain fixed periods of time, and not exceeding a certain specified amount, in consideration of a certain amount of money which is called the premium, and which has been paid by the latter to the former. The amount of the premium is determined from the amount of the policy (or the amount which shall be fixed by the policy as the limit to be paid in the event of the entire destruction of the property insured) and the rate or percentage which is charged by the company. Thus, if the amount of a policy shall be twenty thousand dollars, and the rate shall be one half of one per cent. per annum (fifty cents on each one hundred dollars), the amount of the premium will be one hundred dollars per annum; if the amount of a policy shall be twenty thousand dollars, and the rate seventy-five cents per year (which means seventy-five cents on each one hundred dollars, or three-fourths of one per cent.), the annual premium will amount one hundred and fifty dollars.

The rates of insurance vary according to the chances of fire, or risks, as they are estimated by the insurance companies. Risks are divided into arbitrary classes, such as uninsurable, extra hazardous, hazardous, ordinary, etc. They are determined by such conditions as the characters of buildings (frame buildings, buildings of brick or stone, buildings having wooden beams, floors, etc., fire-proof buildings, buildings containing various kinds of machinery, heating apparatus, steam boilers, etc.), the locations of buildings (whether in proximity to dangerous fire risks, or at safe distances), and the uses and occupations for which buildings shall be employed.

Since the rates of insurance, and consequently the actual costs of insurance, will be seriously affected by conditions such as have been mentioned, the importance of careful

considerations of the subject, in connection with the purchasing or erection of investment buildings, the selection of tenants, the kinds of businesses, and the general management of this kind of property, will be sufficiently obvious. The subject will receive a further consideration in the chapter upon the subject of landlord and tenant.

Fire insurance is usually obtained through regular insurance agents, and the selections of such agents will be matters of importance, since, to a certain extent at least, they must be depended upon for the required knowledge concerning the standing of various insurance companies, as well as for the prompt renewals of expiring policies, and for the proper discrimination between companies with reference to the rates which shall be charged, in order to avoid both needlessly high premiums and the placing of insurance with irresponsible companies for the sake of economy.

Only agents of well-known ability, responsibility, and integrity should be employed ; and they should be instructed to place insurance in none but first-class companies. As an additional safe-guard, and in order that too great a reliance upon agents may not be required, owners of insured property may, with advantage, keep themselves in a general manner informed as to the conditions of the various companies, by paying attention to any important statements concerning such matters which may occur in the daily newspapers, by studying the effects of large fires upon the different companies, and by examining the reports of financial conditions which are issued by the companies.

The rates of insurance which shall be obtained by the agents of investors should occasionally be compared with those which shall be offered by other agents of equal standings, and changes of agents should be made whenever such a course will be plainly to the material advantage of property owners.

When agents have been selected for the purposes of fire insurance, the business may be facilitated by giving to the agents clear memoranda of names, amounts, and correct descriptions of all properties to be insured. This having been

done, the next duties of property owners will be to examine insurance policies as soon as they shall be received from the agents. The examinations should be made with particular reference to the statements and suggestions which are contained in this chapter.

Insurance policies should state correctly the names of the persons to whom losses, if any, are to be paid, and also the estates or interests of the insured persons in the property which is insured, such as "owner," "mortgagee," etc. The amounts of the policies, and the exact terms or durations must be plainly mentioned in the policies, the usual form of statement being to the effect that the insurance company does insure Mary J. Doe as owner, for a term of so many years from such a day at noon to such another day at noon, against loss by fire, to an amount not exceeding so many dollars, to certain described property.

Within recent years, and particularly at times when the rates of insurance have been high, insurance companies have adopted, as a means of compelling owners to insure their properties to the extent of at least eighty per cent. of the values, what is known as the "eighty per cent. co-insurance clause." This clause provides that, in the event of loss, the particular company shall be liable for no greater proportion thereof than the sum insured by the policy shall bear to eighty per cent. of the cash value of the property insured at the time of the loss; nor more than the proportion which the amount of the policy shall bear to the total insurance.

The practical results of this ingenious co-insurance clause will be gains to the companies, and losses to the insured property owners, in all cases of losses by fire, where the total amounts of insurance shall be less than eighty per cent. of the values of the properties which are insured.

This fact may be clearly demonstrated as follows:

Let us suppose that certain property, the value of which is twenty thousand dollars, shall be insured by a single policy, for five thousand dollars only, and that the premises shall be injured by fire to the extent of two thousand dollars. The co-insurance clause will furnish, in this case, the proportion

Company's liability : 2000 :: 5000 : 16,000,

or the company will be liable only for the amount of six hundred and twenty-five dollars, instead of for the total loss of two thousand dollars. In this case the company will save, and the owner will lose, the sum of thirteen hundred and seventy-five dollars, by the operation of the clause which is under consideration.

If we suppose that, in the above example, there shall be two policies of five thousand dollars each, or a total insurance of ten thousand dollars, the remaining data being the same, the resulting proportion will be

Company's liability : 2000 :: 10,000 : 16,000,

or the combined liabilities of the companies (or the single company) issuing the policies will then be twelve hundred and fifty dollars, and the saving of the companies, and the loss of the owner will be seven hundred and fifty dollars.

Finally, if, in the example, we suppose the total amount of insurance to be equal to eighty per cent. of the value of the property, or sixteen thousand dollars, the result will be

Companies' liability : 2000 :: 16,000 : 16,000,

or, in other words, the insuring companies will be liable for the entire loss of two thousand dollars.

It will be evident from this explanation that there should be no objection on the part of property owners to the eighty per cent. co-insurance clause provided total amounts of insurance which shall be equal at least to eighty per cent. of the values of the insured properties shall be carried ; while, on the other hand, if owners shall desire to insure their properties to amounts which shall be much less than the actual values, they must undertake (probably, however, fruitlessly) to obtain insurance policies which shall not contain the eighty per cent. clause. Since, however, the principle of safety, upon which the necessity of fire insurance depends, requires that the amounts of insurance shall be equal to the values of the properties which are insured,

further consideration of the co-insurance clause may now be dispensed with.

The truth of the statement that properties which are insured must be described in policies of insurance with sufficient accuracy to furnish certain and easy identifications, in the event of losses, will be self-evident. For this purpose, although the descriptions of properties need not be as exact and comprehensive as in deeds or mortgages, the properties should be correctly described and located. The following are examples of sufficient descriptions and locations of buildings in insurance policies: "The five-story brick and brown-stone office building, seventy-five feet wide, front and rear, and ninety feet deep, upon the northerly side of — Street, between — and — Avenues, New York City, known as No. — West — Street"; "the four-story brick and stone residence, twenty feet wide, front and rear, and sixty feet deep, situated on the westerly side of — Street, one hundred and fifty feet south of — Street, and known as No. — Street, Boston, Mass."; "the two-story and attic frame Colonial residence, situated on the southerly side of the Northville Road, one and one half miles easterly from the railway station in the village of —, county of —, and State of Pennsylvania, now occupied by Mrs. Mary J. Doe, owner and family."

Insurance policies must be signed by the companies, usually by such of their officers as the president, secretary, or manager; otherwise, there will be no written contracts between the companies and the owners. In some policies the signatures of the necessary officers are printed in the regular places for the signatures (in order to avoid the serious task of obtaining written signatures of these officers on each of the numerous policies which shall be issued by the companies), in which case the policies contain a clause to the effect that they shall not be valid until they shall be countersigned by the duly authorized agents of the companies, at certain places (designating the office addresses or the cities), or spaces for the written signatures of the agents, with the words "countersigned at —, this — day of —, 1897.

—, Agent." In such cases, the signatures of the agents must, of course, be affixed to the policies in the proper places.

Other clauses which are of importance to property owners, and which, therefore, should be attached to fire insurance policies, are : the clause permitting other insurance without notice ; the lightning clause, which provides that the companies shall be liable for direct losses which shall be caused, by lightning ; the clause permitting mechanics to make ordinary alterations and repairs, without notice to the companies ; and that allowing the use of oil for light, and the vacancy of buildings for certain periods of time.

The common method of insuring a building which is in course of erection, is for the owner to take out a separate policy at the time of each payment to the builders, each policy covering the amount of the last payment. Such policies should contain a clause by which the companies shall agree to assume the builders' risks while the building shall be in an unfinished state.

An insurance policy which is about to expire may be renewed, either by the issuing of a new policy, dating from the time of expiration of the old policy, or by means of a certificate of renewal, which is a simple certificate stating that, in consideration of the amount of the premium, policy No. — is renewed for a certain designated period of time, giving also the name of the insured, the amount of the insurance, and a brief description of the premises insured, and signed in the same manner as is the policy. Upon receiving a renewal certificate from the insurance agent, the owner should compare it carefully with the expiring policy, and attach it to, or file it with, the policy which it is intended to renew.

Any changes in the ownerships of buildings, without the consents of the insuring companies ; fraudulent representations to the agents of the companies, concerning the characters or conditions of buildings ; changes in the uses and occupations of buildings, by which the risks of fire shall be increased, without notice to the companies ; fraudulent acts of owners, which shall cause or increase the losses by fire ;

or unreasonable delays in notifying the companies of losses by fire, may entirely invalidate insurance policies, and discharge the companies from liability. If, therefore, there shall be changes of ownership, or of occupancy, such as will increase the risks, or losses by fire, the agents must be at once notified, in order that they may obtain the consents of the companies to the changes or the adjustment and payment of the losses.

The last general item in the subject of expenditures upon real estate—commissions—may be treated more briefly; it involves simply the making of advantageous agreements for the management of real estate, with agents who shall be in all respects satisfactory.

The selection of an agent for the purpose of taking charge of improved real estate, obtaining tenants, collecting rents, in some degree determining the characters and occupations of the tenants, selecting employees, and making expenditures, is a question of great importance, no less than of considerable difficulty to owners of real estate. An unwise or an unfortunate selection of an agent will often result in bad tenants; serious injuries to buildings, notwithstanding excessive expenditures for repairs; loss of rentals through carelessness and incompetence; and finally, perchance, the entire loss of a month's or a quarter's rentals through the absconding and defalcation of the agent.

Unfortunately, alike for investors and for the many real estate agents and brokers who are business men of ability and integrity, real estate agents and brokers, as a class, especially in the larger cities, have come to be looked upon with somewhat of suspicion. Indeed it has become a statement, perhaps quite generally accepted as a fact, that a large number of real estate agents and brokers are men who, having made failures of other branches of business in which they have been engaged, have taken up their present occupations because of the ease and small outlay of capital with which real estate offices may be opened. Be such a statement correct or otherwise, the wisdom of some legal regulation which would practically restrict the business of real estate agents

and brokers to persons of some measure of responsibility and good standing will scarcely be doubted; nor can it easily be doubted that such a measure would be acceptable to the majority of reputable persons who are engaged in the business. But the law undertakes to deal with real estate agents and brokers in no special manner, notwithstanding the importance of their duties and their special opportunities for fraudulent practices.

Owners of real estate must therefore devise for themselves methods of protection against the frauds of dishonest agents. With this principal object in view, the first rule for the selection of real estate agents will be that only those of established reputations, whose businesses are apparently too profitable to admit of fraudulent actions, are to be employed. The remaining suggestions will be in the way of additional precautions against the possibilities of loss by the frauds and mismanagement of agents. Agents, in important cases, may be requested to furnish bonds for the faithful performance of their duties; and to this proposition many agents and brokers will offer no objection. But an equally satisfactory security, and one which will involve less of trouble, appears to be the actual and sufficient responsibility of the agents themselves; and by this it is to be understood that the agents themselves must be the owners of real estate, or of available and attachable personal property. Whenever such a course shall be possible, agents should be continually under the inspection of their employers, any unsatisfactory action being promptly called to notice; they should receive careful and positive instructions upon all important matters, and their regular reports and payments of rentals which have been collected by them should be made as frequent as is practicable, in order that the amounts of rentals which shall be in their hands may be kept at all times as small as possible.

If there shall be substantial reasons why the regular reports of agents cannot be made with satisfactory frequency, arrangements should be made by which portions of the rentals which have been collected shall be paid over to the owners at regular times, intermediate between the times of the regular

reports. For example, if the regular reports of a real estate agent shall be made at the end of each month, and the amount of the monthly rentals shall approximate to the sum of five hundred dollars, the agreement with the agent may require him to pay over to the owner the sum of two hundred and fifty dollars on the fifteenth day of each month, and the balance of the rents at the times of the regular reports.

Whenever it shall become necessary to replace agents who have had charge of real estate by new ones, notices must be at once given to all tenants to discontinue payments of rents to the former agents and to pay the rents to the newly appointed agents until further notice.

It may be remarked, also, that the difficulties and delays which will be incident upon changes of real estate agents will be at their minima in cases in which owners have made it their business to make themselves personally acquainted with their tenants, at least to an extent sufficient to establish their identifications.

Commissions for the sale of real estate, for the leasing of improved real estate, and for the collection of rents, are usually in the form of percentages. If an agent shall sell a lot and building for ten thousand dollars, his commission, from the vendor of the real estate, will be a certain percentage upon that amount; if he shall negotiate a lease of a building for a term of ten years, at a rental of one thousand dollars per year, his commission will be a certain percentage upon the entire amount of the ten years' rent; and if he shall collect rentals amounting to a certain gross sum, his commission will be a certain percentage upon that sum.

With regard to all kinds of real estate commissions, prudent investors will take pains to have exact understandings with agents and brokers before the commissions shall be earned, for the excellent reason that such understandings will often be the means of preventing the charging of exorbitant commissions. It may well be added that there will be no impropriety in bargaining with real estate agents for the lowest rates of commissions which shall be consistent with proper performances of required duties, without regard to

any arrangements or rules which may have been made by real estate exchanges, or other associations of agents and brokers, for the maintenance of uniform rates of commissions.

In a case where the services of real estate brokers shall have been performed by a single person or firm, there can be no difficulty in determining the party to whom the commission shall be due; but, where there shall be several agents or brokers concerned in a single transaction, controversies as to which shall be entitled to the commission will often arise, and if the commission shall be paid to the wrong party, the investor may be put to the inconvenience of paying it a second time to the rightful party, without the possibility of recovering it from the wrongful one.

The deciding legal principle in such cases is that the agent or broker, who shall be the "efficient or procuring cause" of the particular transaction is entitled to the commission; and this principle, although somewhat unsatisfactory, cannot well be further elucidated in a work of this nature. If there shall be serious doubts in the mind of an investor, as to which agent or broker, in a particular transaction, actually was the procuring cause, all parties who may have claims to the commission, should be interviewed before the payment of the commission, with a view to an arrangement which shall be satisfactory to all parties; and if such an arrangement cannot be made, the investor must choose between the alternatives of consulting a lawyer and of taking the chances of a payment to the wrong person.

With respect to the regular commissions of real estate agents, for the general management of investment real estate, such as renting, the collection of rents, the making of repairs, and the exercising of the usual supervision, a simple and satisfactory arrangement seems to be that the agents shall perform all the regular duties; that they shall receive, as compensations, each month or quarter, agreed percentages of the gross amounts of rents which shall have been collected during the period; and that either party may terminate the agreement by giving certain notice to the other. Other arrangements are often made between investors and real estate

agents, but they will generally be open to objections which will not apply to the arrangement which has been suggested. Among such arrangements may be mentioned one which appears to be generally favored by agents—that of separating the commissions into a percentage for leasing and a percentage for the collecting of rents. This arrangement will have the disadvantage of compelling owners to pay commissions upon leases which, by dispossession, or the voluntary removal of the tenants, may be terminated before their proper expirations; it may also have a tendency to cause certain agents to lease the premises of their patrons to irresponsible tenants, and for longer terms than shall be satisfactory to the owners. Arrangements by which commissions shall be further separated by allowing agents certain percentages upon amounts which shall be expended under their supervisions in repairs, will offer objections which will be sufficiently manifest to dispense with the necessity of further remarks concerning them.

The actual rates of percentages of commissions which are paid to real estate agents vary to such an extent that no specific figures can be given; the reasons for such variations will evidently be the differences between localities, the ease or difficulty with which different kinds of real estate can be rented and the rents collected, and the relative amounts of rentals from different properties. An owner who shall be possessed of a large amount of improved real estate, in the immediate vicinity of the real estate agents' places of business may reasonably expect to pay lower rates of commissions than one whose investment properties shall be small and at points which are remote from the offices of the agents; and so the owner of a large office building, which shall be continuously filled with prompt-paying tenants, may easily obtain first-class agents who will take charge of the real estate at low rates of commissions; while the owner of low class tenement houses, or other troublesome buildings, which shall be difficult to rent, and shall offer still greater difficulties to the prompt collection of the rents, will be obliged to pay high commissions in order to obtain satisfactory agents.

The business abilities and reputations of agents will also affect the rates of commissions (although apparently not to so great a degree as in other branches of business), capable and responsible agents naturally and properly requiring higher compensations than will suffice for those who are inexperienced and irresponsible.

With regard to the actual rate of commissions in each special case, a general rule only can be given, but it will be, it is believed, not entirely without practical value. Taking into consideration the various elements which have been mentioned, and having ascertained as nearly as possible the prevailing actual rates of commissions in the particular neighborhood, and for the conditions of the particular property, the investor must, as in other cases of purchase and sale, make the best bargain which is possible under the circumstances, taking care that the rates, which shall finally be settled upon, shall not be higher than the prevailing rates, unless there shall be some distinct compensating advantage.

The discussion of the remaining condition which is necessary for the return of fair and regular incomes from real estate, of the important subject of leases, and of the various considerations growing out of the relation of landlord and tenant, will be treated in a separate chapter, which follows the present one.





CHAPTER X

LANDLORD AND TENANT

HAVING obtained properly conditioned, and properly improved real estate for the purposes of investments, the question next in order will be concerning the best means by which the property shall be made to produce the required incomes; and the answer evidently must be, "by leasing the premises to satisfactory tenants."

This is the universal method of obtaining incomes from investments in real estate. We must, therefore, give to the subject the attention which its great importance plainly demands.

At the outset, an intimation that a careful study of the subject will prove to be profitable should not fail to be appreciated. Not every person who is possessed of real estate is competent to manage it to the best advantage; and the different results between a careless underestimation of the difficulties which are involved, and a faithful consideration of the difficulties, will often signify, on the one hand failure, and on the other hand success.

For the advantageous leasing of real estate, the character of the real estate itself being in all respects satisfactory (by reason of the correct application of the principles which have been already explained), the conditions may be conveniently stated as three, namely: leases must be properly drawn; the amounts of rentals must be sufficient, and their collection sure; and the characters of tenants, and the uses of premises must be satisfactory.

These conditions, although at first sight one may seem

to include an other, and the entire subject may, therefore, seem to be capable of adequate treatment under fewer general conditions, will be considered separately and in the order in which they have been named.

The suggestion that, if rentals shall be sufficient and sure, there should be little need that landlords concern themselves with the characters of leases and tenants, may be disposed of, for the present, by the statements that there are many requisites for the advantageous leasing of real estate other than the mere obtaining of sufficient rentals, and that these requisites will depend, for the most part, upon the conditions which the suggestion seeks to dispense with — statements which, in the course of the present chapter, will receive ample verification.

A lease is called an *indenture* of lease, from the fact that formerly certain legal instruments were written upon parchment, with some word, such as *chirographum*, written in the spaces between the duplicate parts, and were then cut apart with notched or *indented* lines through the particular word, leaving parts of each letter on either side of the lines, as a means of identification of the duplicate parts.

A lease is a contract, between a landlord on the one side and a tenant on the other, which gives to the tenant the possession of the landlord's real estate, for life, for a certain fixed term, or at will, in consideration of the rentals which are agreed to be paid by the tenant. In other words, a lease is a contract, or an instrument, which creates an estate in land for life, for years, or at will.

The regular clauses which are contained in an ordinary lease are in effect as follows :

A statement that A. B., party of the first part (the landlord) has leased to B. C., party of the second part (the tenant) certain described premises, for a certain specified term, at a specified rent, payable at certain times and in certain specified amounts ; a covenant that, if the party of the second part shall make default in any of the covenants of the lease, the party of the first part may re-enter the premises, and remove all persons therefrom : a covenant that the party of the

second part will pay the rent in the manner specified in the lease, and, at the expiration of the term, or sooner termination of the lease, will quit and surrender the demised premises in as good a condition as reasonable wear and use thereof will permit, damages by the elements excepted ; a covenant of quiet enjoyment, to the effect that the party of the second part, upon paying the rent and performing the covenants of the lease, shall and may peaceably and quietly have, hold, and enjoy the demised premises for the term specified ; and the usual conclusion, " In witness whereof the parties to these presents have hereunto set their hands, etc , " with the signatures of the parties, attestation clause (" signed, sealed and delivered in the presence of "), and the signatures of the witnesses.

Such a lease will, obviously, allow to a tenant a wide latitude in the use of the premises which are demised by the lease. The premises may be used for any legitimate business ; they may be used and occupied at all hours of the day or night ; the tenant may sublet the premises or assign the lease to persons and uses which may be entirely unsatisfactory to the owner—in a word, the tenant will be obliged only to pay the rent, to refrain from actually abusing the premises, and to occupy the premises for purposes which are not declared by the laws to be unlawful.

If, therefore, premises shall be of such characters as may be injured by unexpected uses, or if the owners shall have other reasons for restricting their premises to certain uses and occupations, it will be necessary to add to the simple form of lease which has been indicated, certain other covenants which are applicable to the special circumstances of the leasing.

The following are brief descriptions and explanations of covenants which should be included in all leases under which circumstances may, by any reasonable possibility, render the special covenants desirable from the owners' points of view :

In another part of this work the unwillingness of tenants, in general, to repair, at their own expense, the premises of their landlords, has been mentioned, as well as the good

policy of requiring tenants to agree to make repairs, notwithstanding the disposition which has been referred to. Without unnecessarily considering the legal aspects of the matter of repairs, sufficient reasons may here be given for the general statement that all leases of considerable importance should contain covenants by which tenants shall agree to make all necessary repairs to the premises which they shall occupy at their own costs. The simple clause which requires the tenant to quit and surrender the premises in as good a state and condition as reasonable use and wear thereof will permit will go but a short distance in the direction of protecting premises from actual injuries ; for the scope of the words " reasonable use and wear," unless their signification shall be modified by other covenants, or facts, will be wide enough to cause, in many cases, serious damage to the owners of real estate. Reasonable use and wear of a building which shall be used for the business of a worker in heavy metals, and which building shall not be designed for such purposes, may easily result in great damage to the premises. So the nature of many other branches of business is necessarily such that only buildings which shall be especially constructed will be able to endure the excessive wear, without serious and lasting injuries. The covenant, on the part of the tenant, to repair, is broad enough, in its general significance, to relieve the landlord of the expense of making the repairs, and to compel the tenant to make them, in all cases where tenants shall be actually responsible, or shall have furnished actually responsible sureties.

Although, in the majority of cases in which the amounts of necessary repairs shall not be large, the owners will find it to their advantage to make the repairs themselves, in preference to the difficulties of legal proceedings against tenants ; still there will always be possibilities of extensive damage to leased premises, involving heavy expenditure, and against these owners must endeavor to protect themselves. The covenant which requires tenants to make repairs will, moreover, often exercise a restraining effect upon tenants who, otherwise, will show very little regard for the

properties of their landlords ; for tenants, as a class, be they ever so responsible, are, like the majority of mankind, at least willing to avoid trouble and legal complications which interfere materially with proper attention to business, when the cost of such avoidance will be only the using of the premises which they occupy in reasonably careful manners. The covenant which is in question may also be the means of preventing suits against landlords for damages growing out of alleged personal injuries, which shall be due to negligence with regard to the conditions of their premises ; *or at least the covenant will often furnish a legal recourse against tenants in cases of such suits for damages. So, also, the covenant will prevent claims by tenants for damage from leaking roofs, defective plumbing, etc., as well as removing legal reasons for quitting premises, under the statutory eviction acts, which allow tenants to surrender premises which have become untenable. Tenants evidently cannot properly find fault with the conditions of their premises which are due to their own failures to fulfil the covenants contained in their leases.

A clause which is known as the " fire clause " is commonly included in leases, for the purpose of making definite provisions for the effects of possible fires upon leases. The clause is to the effect that if the buildings upon the demised land shall be partially damaged by fire they shall be repaired by the landlords ; in case the damage shall be so extensive as to render the buildings untenable, the rents shall cease until such times as the buildings shall be put in complete repair ; and in case the premises shall be totally destroyed by fire or otherwise, the rents shall be paid up to the times of such destruction, and then and from thenceforth the leases shall cease and come to an end ; provided the damage or destruction shall not be caused by the carelessness, negligence, or improper conduct of the tenants or their agents or servants.

The covenant on the part of the tenant to make all repairs to the demised premises will, under ordinary circumstances, require the tenant to rebuild the buildings, even though they

shall be totally destroyed by fire. There are, however, few cases in which landlords will be warranted in relying upon their tenants, rather than upon first-class insurance companies, to rebuild buildings which shall have been destroyed by fire. The fire clause may, therefore, be regarded as a necessary one in all cases in which the demised buildings shall be covered by insurance. It may be dispensed with in the comparatively few cases in which owners of real estate shall insure themselves against fire, especially if the premises shall be occupied by tenants of known responsibilities.

A covenant, which should be included in all leases, except those of premises which are to be used for businesses which will necessarily place insurance rates at the highest, is that by which tenants agree that they will not occupy demised premises for purposes which are deemed to be extra hazardous. This covenant is often included in one which contains also a clause against assigning the lease or making alterations in the demised premises ; thus, the tenant covenants that he " will not assign this lease, nor let, nor underlet the whole or any part of the said premises, nor make any alteration therein, without the written consent of the party of the first part, under penalty of forfeiture and damages ; and that he will not occupy or use the said premises, nor permit the same to be occupied or used, for any business deemed extra hazardous on account of fire or otherwise, without the like consent, under the like penalty." This entire covenant may well be contained in leases generally.

Landlords, assuredly, have the right to know, and should provide a means of knowing, at all times, the purposes for which their premises are used by the tenants. Owners of real estate very naturally prefer tenants whose occupations shall be such as to insure the proper treatment of their premises ; they may also very properly prefer that their buildings shall be occupied for purposes which, with regard to legality and respectability, shall come up to required standards. Every properly drawn lease should therefore contain a covenant to the effect that the tenant will occupy the leased premises, and allow the same to be occupied, only for

specified purposes, unless upon the written consent of the landlord.

In general, landlords have no right to trespass upon their premises, while the possession of the premises shall belong to their tenants. Unpleasant, if not serious difficulties, with regard to just what acts of the landlord will constitute a trespass against the tenant, may be easily avoided by including in leases clauses which shall provide properly for such occasions. Leases may, therefore, specify that the landlords shall have the right to show the premises at reasonable hours to persons wishing to purchase or hire; to put notices "for sale" or "to let" upon the buildings at certain times of the year; and to enter the premises, at proper and reasonable hours, for purposes of inspection, making alterations, repairs, etc.

Still another clause which will be found to be beneficial to the owners of premises which are situated in cities or villages having various departments of government, such as fire departments, health departments, etc., is a covenant by which tenants shall agree promptly to execute and comply with all rules, orders, and regulations of the city government and its departments, and also to execute and comply with all rules and orders of the fire underwriters for the prevention of fire.

The general rule with regard to the agreements which should be contained in leases in special cases must be that there shall be no verbal agreements of importance between landlords and tenants; that is, that all special agreements between landlords and tenants shall be carefully included in the written leases. If, therefore, there shall be a possibility that a landlord's agents or janitors will need to pass through the premises in question, in order to turn off water from certain parts of the buildings, to make water connections or sewer connections with other premises, to repair elevator ropes, electric wires, steam pipes, etc., or for any other purposes, the lease should contain agreements which will give to the landlord the required rights at all proper and necessary hours. If certain pipes, ropes, belts, wires, etc., belonging not exclusively to the portion of the premises which shall be

occupied by a particular tenant, shall extend into or run through the tenant's premises, the tenant should expressly agree to allow these things to occupy their necessary positions upon his premises without hindrance, and to take reasonable care in the protection of them.

Covenants against nuisances, machinery, steam boilers, or heavy loads ; covenants to prevent occupancy of premises during the night hours or on Sundays and legal holidays ; and covenants providing for the payment of water rents or taxes, and gas bills, in cases of extraordinary consumption of water or gas, may be included in leases in the proper cases. And finally, in all important cases, landlords should look well after their own interests in the drawing of their leases, understanding fully the fact, that ambiguous and uncertain agreements between landlords and tenants will, more often than otherwise, meet with judicial constructions which will result to the advantage of the tenants.

In the case of a large building which shall be occupied by a number of tenants (such as an office building, a lot building, or an apartment house), an excellent plan, with regard to the proper restriction of the various tenants, is the adoption of a number of suitable rules and regulations for the building, a printed copy of the rules being attached to each lease, and each lease containing a covenant, on the part of the tenant, to comply with and execute the rules and regulations of the building.

Concerning the terms or durations of leases generally—whether long terms or short terms will, in the main, be most advantageous to owners of real estate—it is evident that the rule must depend upon particular circumstances in each special case ; although, in a certain broad sense, it may be said that long-continued and uninterrupted occupancy by a single tenant is deemed to be of material advantage to premises which shall be so occupied.

Considering the question to be dependent solely upon the amounts of rentals which shall be obtained, landlords must exercise, to the best of their abilities, their judgments with regard to future conditions, seeking responsible tenants for

long terms when there shall be prospects of lower prevailing rents in the future, and giving leases only for short terms when the prevailing rents in the neighborhoods of their premises are likely to become higher.

It is evident that leases for long terms should be very carefully drawn (special attention being given to the including of all covenants which shall be necessary for the protection of the owners of the premises) for the reason that important defects in this respect may result in many years of trouble and injury to the landlords, while in cases of leases for short terms such defects may soon be remedied by the renewals of the leases or by the changing of tenants.

The possibility of difficulties which are especially attendant upon long leases have induced many landlords to adopt the practice of giving only very short leases — commonly (especially with tenement houses, apartment houses, and certain kinds of loft buildings and small office buildings) only from month to month—the theory being that all care and difficulty in the drawing of leases may thus be dispensed with, because all undesirable tenants may be turned out of the premises before they shall have had opportunities for extensive injuries. This method of very short terms will afford an easy solution of the difficulty in cases where irresponsible tenants will be in the majority ; it is especially useful in cases of apartment buildings, where the danger of occupancy by tenants who will use the premises for disreputable and illicit purposes is a serious consideration. But, on the other hand, tenants who shall be in all respects first class cannot easily be induced to accept such temporary arrangements, being naturally unwilling that their possession of residences and of business places shall be to so great an extent precarious. So, tenants who shall propose to expend considerable amounts in the preparing of premises for the purposes of their occupancies,—in decorations, in the erection of machinery or trade fixtures, in the costly moving of extensive stocks in trade, or of valuable furniture,—will not be willing to incur expenses of this kind unless their leases shall assure them of possessions of the premises for at least reasonable terms.

Long-continued occupancies of buildings by the same tenants will, without doubt, prove to be beneficial to the general reputations of the buildings among tenants, as indicating landlords, rents, business facilities, and general conveniences which will be generally satisfactory to tenants ; and conversely, too frequent changes among the tenants of buildings will not fail to suggest to tenants generally the fact that something must be wrong with the premises, and will give to the buildings bad reputations which will often prove to be seriously injurious. So also the amounts which must necessarily be expended for repairs upon buildings will be much less in cases of long leases than in cases of short ones ; and the same will be true with regard to loss of rentals which is due to vacancies while making repairs and obtaining new tenants.

An important objection to long leases is that they will often interfere with the sales or other proposed dispositions of the premises upon which they are incumbrances, many purchasers of real estate desiring the immediate and free and clear possession of premises which they shall purchase, for purposes of their own ; moreover, tenants often take advantage of such circumstances to exact exorbitant sums from those for whom it may be necessary to purchase the discharges of the leases. If, therefore, there shall be probabilities that it will be necessary or advisable to sell a particular piece of improved real estate in the near future, or to make any other particular disposition requiring the unincumbered possession of the property, the terms of the leases must be regulated accordingly. With this end in view, leases for considerable terms are sometimes given, with covenants to the effect that, if the owners shall desire to sell the premises, during the terms of the leases, they shall give certain written notices to the tenants, and that the tenants will thereupon quit and surrender the premises to the landlords.

Similarly, if there shall be several tenants in one building, the various leases should be so termed that all will expire upon the same date ; for, otherwise, a single tenant, occupying ever so small a portion of the premises, will, if the

unexpired term of his lease shall be sufficient, be able to demand his own price for the surrender of the small portion, without which the possession of the premises will be useless.

A common and very unwise practice among landlords is to give to their tenants privileges or options for extensions of the terms beyond those which are specified in the leases—as, for instance, “for the term of five years, with the privilege of a further term of five years under the same covenants and conditions.”

Such agreements will evidently have the effect of binding the landlords to long terms, while the tenants will be free to choose for themselves the lengths of their terms. If, in such a case, rents in the particular neighborhood shall show tendencies of decreasing, the landlord must expect his tenant to choose a short term, and then perhaps to take himself to other premises at lower rents; and if the rents in the neighborhood shall give indications of becoming higher, the landlord will derive no advantage from the circumstance, for his tenant will demand, and may lawfully obtain, an extension of his term at the former low rents. For these reasons, privileges of further terms should never be given, except in cases where such disadvantageous concessions shall be absolutely necessary for the renting of premises; and where such concessions cannot be avoided tenants should be required to give to their landlords ample notices of their intentions with regard to the extensions of their terms.

The clause, in a lease, which specifies the time and manner of the payments of rent, should be precise and clear, stating the exact days and amounts of the several payments; thus, the rent may be made payable “in equal monthly payments, of one hundred dollars each, in advance, on the first day of each month,” or “in equal quarterly payments, of three hundred dollars each, at the end of each quarter, to wit: on the first day of each month of January, April, July, and October.”

If, by some unfailing method, all danger of losing rents could be removed, and the tenants' prompt payment of

rentals could be positively assured, the question of the exact times of the payments—whether in advance or otherwise, by the month or by the quarter—would become merely one of mutual convenience between landlords and tenants. But the fact is that landlords cannot safely rely upon the responsibilities of tenants generally; notwithstanding all such precautions as the obtaining of references, statements regarding financial responsibilities, and even the requiring of securities for the rents, owners of real estate must seek, by the manners in which the payments of rents shall be required, to find additional assurances of the tenants' prompt performances of their covenants. Hence the common practice of making rents payable monthly in advance, or quarterly in advance.

This method, although it may be a step in the right direction, must receive no higher commendation than it actually deserves. While it is often thoughtlessly looked upon as being equivalent to an actual security for rents, even if promptly complied with, it will, in fact, amount merely to a security for the rents for the periods between the times of payments. If the rent of certain premises shall be payable monthly, and not in advance, the irresponsible tenant, by quitting the premises at the end of the month, and before the payment of rent for the particular month shall have been made, may defraud his landlord of one month's rent; while, if the rent shall be payable monthly in advance, the rent for the particular month will have been secured to the landlord, if the landlord shall insist upon proper punctuality, by its previous payment. If the payments of rents shall be quarterly, at the end of each quarter, the landlords may be defrauded of three months' rent by the tenants' disappearances at the end of a quarter without the payment of the quarter's rent; while, if the quarterly payments of rents shall have been made in advance, the schemes of the dishonest tenants will evidently come to naught. It follows logically, from this principle, that landlords may advantageously strive to receive the payments of their rentals as far in advance as possible. To such a proposition the only objection appears to be that landlords,

thus receiving their incomes in advance, will, in a certain sense, continually overdraw their accounts, and may not provide for the possibility of having to return rentals to tenants whose premises may be destroyed by fire or otherwise, or for the periods between the last payment under one lease and the first payment under the succeeding lease which may not provide for payments of rent in advance. The correct remedy for such possible evils, however, will assuredly not be the refusals of landlords to accept the advantages of payments in advance, for the sake of making their necessary provisions for the future more simple ; but rather that they shall accept the advantages, and, by the practice of a wise economy and forethought, find themselves at all times prepared for the exigencies and possible misfortunes of the future. With this understanding, the most satisfactory rule in this respect seems to be that owners of real estate shall endeavor to have their rents made payable as far in advance as possible (commonly monthly in advance, and frequently quarterly in advance), regarding the method, however, only as a partial security for the rents, and waiving it, upon serious objection on the parts of tenants who shall be in all respects thoroughly guaranteed.

The principles which have been discussed, in the earlier portions of this work, have furnished ample rules and suggestions for the determination of the actual amounts of rentals which shall be necessary for the proper maintenance of investments. Briefly recapitulated, they are, that rentals must be sufficient to pay all the expenses of managing real estate, the proper amounts of sinking funds, and satisfactory rates of interest upon the amounts which have been invested.

In a somewhat special manner, the broad principle, that avarice with regard to the returns from investments will prove to be injurious to the interests of investors, applies to the leasing of improved real estate. Landlords and buildings, especially those who and which shall be at all conspicuous among others, will eventually receive certain definite reputations among tenants generally. There are many landlords who are commonly reputed, among tenants, to be avaricious

and grasping, to demand the highest possible rents for their premises, to impose the strictest possible compliance with duties and obligations upon their tenants, and generally to be difficult to agree with. Such landlords are commonly known as "hard landlords." Others are generally believed by tenants to be reasonable, just and fair in all respects, to demand only fair rentals, and to require only substantial performances of the obligations of their tenants—"good landlords." So there are many buildings which have generally bad reputations, because of unreasonably high rentals, constant trouble concerning repairs, and constant changing of tenants and businesses—"unlucky buildings"; while others enjoy the contrary distinction of being "lucky buildings." Concerning the comparative advantages of these two general kinds of reputations, there can be little doubt. Prudent and far-seeing landlords will therefore endeavor, even if for no other or better purpose than the actual benefits which are to be derived, to establish good reputations for themselves, and for their investment properties.

The two principal elements which go to establish the desirable good reputations among the tenant class generally, are the keeping of premises in conditions which will be satisfactory to tenants generally, and the maintaining of moderate standards of rents, compared with the rents of similar premises in the particular neighborhoods. Of the former element, sufficient has already been said, under the subject of repairs; and, of the latter, it may be said that owners of real estate, while they must necessarily obtain rents which, in amounts, shall be sufficient to satisfy the rules of incomes from investments, will find it finally to their advantage, if they shall be able, by judicious management, to accept reasonable returns from their investments, and to maintain, uniformly, for their premises, schedules of rents which are slightly below those of similar neighboring premises. The danger of a competition, among landlords, growing out of this policy of moderation, and which may result in serious diminutions of rents in general, appears, from the results of experience, not to be at all imminent; for, competition among landlords, as

in all other branches of business, will be regulated mainly by the inevitable laws of supply and demand, and, for the rest, it appears that the avarice of the majority may be safely depended upon.

In connection with the subject of the necessary and advantageous amounts of rentals, the special case of improved real estate, which has fulfilled most desirable conditions by increasing materially in value after improvements have been erected upon it, may be mentioned, both as an exception to the general rule which determines the amounts of rentals, and as an especially advantageous opportunity for the practice of leasing real estate at rates which are somewhat lower than those of surrounding premises. In such cases the rule that the amounts of rentals must be sufficient to pay all expenses, allowances for sinking funds, and fair rates of interest upon the amounts which have been invested will, evidently, prove to be inadequate, because it will result in placing the rentals at figures which will be much too low; at the same time the increases in values will give to the owners advantages over neighboring owners, who, having purchased at later dates, and at more advanced prices, must obtain greater returns from similar properties.

These statements (possibly somewhat involved) may be explained clearly in the following manner :

Suppose that a certain piece of improved real estate shall have cost the owners the sum of fifty thousand dollars, and that the gross amount of rentals from the property, as determined by the regular rules, shall be four thousand dollars per annum. If we suppose that the property shall have been so judiciously purchased that, in the course of time, the value shall have increased to one hundred thousand dollars, a literal application of the regular rule will require that the amount of rentals shall be increased simply to the extent of the additional taxes, and the possibly increased expenses — we may say to the annual sum of forty-five hundred dollars — because the amount which has been invested remains the same. It is undoubtedly true that even such a strict application of the rule will still protect the investment, and will

still prove the correctness of the rule itself. But the owners will be fairly entitled to greater benefits from the exercise of such rare abilities and sound judgment, and the increase in the value of their premises will be due to causes which will also make the premises more valuable for tenants. Logically, then, the conclusion will be that, since the new value is double the old value, the new amount of rentals should be double the old amount; or, more accurately, since the necessary annual allowances for sinking fund, repairs, etc., have not been increased, that the new amount of rentals should be made up of the new amount of expenses, the original allowance for sinking fund, and an interest upon the amount which has been originally invested equal to double the original rate—let us say, an annual rental of seventy-five hundred dollars.

If, now, we suppose that the owners of an adjoining piece of property (similar in all respects to the one in question), having purchased and improved their property at a later date, have paid for their investment the sum of ninety-five thousand dollars. Allowing eight per cent. upon the amount which has been invested (by which rule the amount of rentals of the first-mentioned premises has been determined), the last-mentioned owners must receive an amount of rentals which is equal to seventy-six hundred dollars, in order that their investment shall be a satisfactory one. Thus, it is evident that the first-mentioned owners may offer exceptional inducements to the tenants of the neighborhood, by placing the annual rentals of their premises at figures as low as seven thousand dollars, and may still obtain splendid annual returns from their investment.

Investments of the kind and character which has been suggested in the more satisfactory of the two premises of the illustration, although to be sure, they are not of ordinary occurrence, are by no means visionary and impossible. That such investments really do exist, and are possible in practice, may be clearly demonstrated by the citing of three actual cases, with all the facts of which the author has been acquainted, from the first steps to the present complete conditions of the investments :

In the first case, the investment of a very considerable amount returns at the present time to the owners an actual clear net rental which is equal to twelve and one half per cent. per annum upon the amount which has been invested, the rents being secured in the best possible manner, and the tenants being business men of well-known abilities, well satisfied with their tenancy of the premises.

In the second case, an investment of a smaller amount, the gross returns from which have never been materially less than eight per cent. upon the amount invested, now, with excellent security, combined with contentment on the part of the tenants, returns to the owners an annual rental which exceeds ten per cent., entirely net, upon the amount of the original investment.

In the third case, which includes all the desirable elements of safety, security of rentals, and contentment and prosperity of tenants, apparently in a very high degree, the investment, after a period of some fifteen years, during which the lowest gross annual rentals amounted to slightly over seven and three fourths per cent. upon the amount invested, now returns a clear, net annual rental which is equal to fourteen and one sixth per cent. upon the amount which was originally invested ; moreover, under the conditions of the lease, the net annual percentage will, within a few years, be increased to the remarkable one of nineteen and one quarter.

Instances of this kind may well be cited as exemplifying investment in its highest and most perfect form. Investors who, without risk or speculation, in spite of aggressive competition upon every side, notwithstanding the constant decline in the regular rates of interest and money values, and, better than all, without wrong, injury, or injustice to any person, have carried their investments up to such splendid conditions, may justly claim to have brought to bear upon the difficult subject of investment a consummate skill and a perfection of judgment fairly entitling them to the magnificent recompenses which they now enjoy.

The determination of the numerical amounts of rentals which will be necessary for satisfactory investments in real

estate, is, as has been shown, a comparatively simple matter of arithmetical calculation. The securing of rentals, or the making of their collection sure, will in most cases prove to be an entirely different matter. This question it is, with its attendant and constant arrears of rents, and suits and proceedings at law to enforce their payments, which presents to the majority of landlords their greatest difficulties. Having been deprived generally, by changes in the laws, of former remedies for the enforcement of the payment of rents; having no adequate means of collecting rents from irresponsible tenants, or from tenants who may become irresponsible at will; and having no redress from the continued failure of tenants to pay their rents, except the ousting of the tenants, and the consequent vacating of the premises; landlords, as a class, find themselves confronted by perplexities the solutions of which, in many cases, appear to be well-nigh impossible.

The question of making the collection of rents sure will, evidently, present the least difficulties in cases where real estate shall be so conditioned as to be in regular demand by tenants of the most responsible characters; and the greatest difficulties will be present in cases where there shall be such scarcities of tenants or where tenants shall be of such irresponsible characters that landlords must choose between the chances of considerable losses of rents and the certainty that their buildings will stand vacant and idle.

In the discussion of the various methods of securing rents and of the characters of tenants generally, it will evidently be necessary to set out with the assumption that the real estate to which the discussion will be applicable shall be, at the worst, of such characters as to permit of some choice with regard to tenants. In other words, the discussion will apply only to real estate which shall be, at least, not below the average with regard to renting qualities. Owners of real estate which shall be below this standard in character, must strive to bring out the best possible results, against adverse circumstances, obtaining the best available securities whenever possible, and renting their premises without securities,

when the only alternative shall be the vacancy of the premises.

It seems also to be a necessary remark, though by no means a pleasant suggestion, that, in so far as it shall concern the payment of rents, the comparative honesty of tenants is an element which must have little or no place in the discussion ; for the fact that only a small proportion of tenants will, by reason of sheer honesty, continue to occupy premises and to pay rents to their own disadvantage, seems long since to have been established beyond a reasonable doubt.

There exists, in certain kinds of real estate, a condition of natural security, with respect to the collection of rents ; which condition is due to the fact that the tenancies are to such an extent profitable, that all danger of losses of rents, or losses by reason of vacancies, seems to be removed. To this fact alone is due the remarkable rent-paying qualities of premises which are situated in certain disreputable sections of large cities, and similar qualities, to a lesser degree, in the older and more densely settled, though not disreputable parts of some large cities. That tenants, whether responsible or irresponsible, honest or dishonest, will pay their rents and perform their agreements when by so doing they will be obtaining for themselves substantial advantages is, indeed, a self-evident proposition. Excellent reasons, however, will be found, as the discussion concerning the characters of tenants proceeds, for a desire on the part of properly constituted investors to avoid properties of the kinds which have been last mentioned. We may therefore proceed at once to the consideration of the methods of making the collection of rents sure which will prove to be the most practicable and the most advantageous to owners of real estate generally.

The subject of the payment of rents in advance has already been discussed at some length, and the conclusion that landlords should accept agreements for the payment of rents as far in advance as possible has been reached in a satisfactory manner. It is evident that this conclusion may, at least in theory, offer a perfect method of making the collection of rents sure ; which method will be the payment of the greatest

possible amounts of rent — or the rents for the entire terms of the leases — in advance, before the occupancies of the leased premises by the tenants shall begin. In cases of long terms, and of considerable amounts of rents, such arrangements will be practically out of the question; for few indeed are the tenants who will consent to the placing, in the hands of their landlords, of the necessary large amounts of money, thus losing the use of and the interest upon their money, without the imposition of compensating conditions to which landlords cannot agree. Even in tenancies of short durations, serious objection to such propositions must be expected from tenants. Nevertheless, there are cases in which no satisfactory securities can be offered by proposed tenants, and the unwillingness of the owners to lease their premises to the proposed tenants will be so great that the ultimatum of paying the entire amounts of the rents before taking possession of the premises may properly be given to the proposed tenants.

All methods of securing the rents from real estate may be included in two general classes of tenancies: first, that in which the tenants themselves shall be of undoubted responsibilities; and second, that in which the tenants, not necessarily responsible themselves, shall furnish responsible sureties, or other practical security for the performance of their covenants.

Just what elements must go to make up the undoubted responsibility of tenants which is required in the first class, especially in our times of rapidly changing circumstances and of increasing difficulties in the way of enforcing obligations, and just how the necessary responsibility may best be determined, are questions which are not without serious difficulty.

In many cases, financial responsibility will be found to be of an extremely transient nature. The responsible man of to-day may (by the employment of some simple means of transferring his property, and with the aid of the hesitancy which appears to be manifest in the courts to interfere with such transactions) in a short time transform himself into one against whom judgments will prove to be not worth their costs.

The person of real financial responsibility must be one who not only shall be the owner of ample property, over and above all debts and obligations,—property which can be sold under execution—but also one who, because of well-known and long-established character for stability and substantial qualities, is likely to remain in the possession of his property. He must be engaged in no hazardous business; he must be no speculator, no indorser or discounter of notes, no commercial weather-cock.

There are in most of the cities of our country certain business firms which have been for many years engaged in the same line of business, and the reputations of which for stability and responsibility seem to have been long ago perfectly established. Such firms or persons will generally prove to be satisfactory tenants in all respects, and, unless there shall be reasons to suspect changing circumstances, are, in general, much to be desired as tenants. But in such cases landlords may well have a care that the highly reputable firms or persons shall, themselves, be identified with and bound by the leases—that the leases shall not be signed by agents or attorneys, who may be found to have no authorities to bind the responsible parties.

All leases to tenants who shall conduct business as agents or managers for companies or corporations which may make a practice of hiring premises in the names of managers, agents, or other irresponsible parties, will prove to be worthless to the owners of the premises, if the characters of their businesses shall, at any time warrant the throwing up of the leases. A lease to Richard Roe, Agent, or to Richard Roe, Manager, is generally equivalent to a lease to Richard Roe personally; and it is evident that Richard Roe may be a person of no responsibility whatever, although his employers may be of the highest responsibilities.

The necessary qualities of responsibility and stability must be ascertained from the statements of proposed tenants themselves, verified by careful inquiries among persons who are well acquainted with them, and by the examination of references which must be given by the proposed tenants. The

statements concerning their responsibilities which are required of proposed tenants should be full and free, with the perfect understanding that the statements and representations are to form parts of the considerations for the leases ; and also that they shall be treated by the landlords and agents as perfectly confidential. If, under such circumstances, there shall be any hesitancy or disposition to become offended on the parts of the proposed tenants, suspicion may well be excited by the circumstances; for, well knowing that landlords seek such information only for their own protection, and with no wish or intention to pry into the private affairs of their tenants, honest men can find no reasonable grounds either for secrecy or indignation upon such occasions; while those who desire to conceal the truth will make of their assumed indignation excuses for their conduct.

Statements which shall be made by prospective tenants must, whenever possible, be verified by further inquiries. These will often prove to be of real service in the prevention of fraudulent misrepresentations which may otherwise involve landlords in leases with unsatisfactory tenants.

References, unless intelligently made use of, will very often prove to be of no value, or, in fact, actually injurious to the interests of landlords ; for it is not to be doubted that nearly every rascal may find friends and relatives who will speak of him in terms of the highest praise. Quite as much attention must be given to estimations, at least, of the characters of the persons or firms who shall be referred to, and their relations with prospective tenants, as to the language of the recommendations. If a reference shall prove to be a relative, a business connection, or an intimate friend of a proposed tenant ; if a reference shall be found to be under obligations of any kind to a proposed tenant ; or if there shall be any reason to believe that the reference may derive, or even shall imagine that he will derive, any benefit from the leasing of the particular premises to a proposed tenant, the recommendation which shall be given must be regarded with suspicion. Former partners and business associates of proposed tenants will often be of no use as references.

Likewise, wholesale business houses, which may be anxious to continue business dealings with proposed tenants, possibly upon a basis of strictly cash payments; and small banks and similar institutions, which may be desirous of the patronage of the proposed tenants, may be regarded generally as poor references. It may also be remarked that an undue enthusiasm on the part of a reference, in the recommendation of a proposed tenant, and a willingness on the part of the reference to go to considerable trouble for the purpose of recommending a proposed tenant, may be regarded as suspicious circumstances. For the purposes of references for proposed tenants, previous landlords and their agents, if of reputable standings, and unless their shall be apparent objects which may be gained by false recommendations (such as the hope of collecting arrears of rents, or malicious dispositions to misrepresent the characters of the proposed tenants) may be considered in general to be excellent.

Perhaps it may be stated, as a general rule, that the majority of persons will be naturally loth to give bad characters to others; and this fact must be borne in mind when references of proposed tenants shall be examined. Therefore references, or other persons of whom inquiries may be made, must not be expected to make comprehensive statements concerning the bad characters of proposed tenants. On the contrary, inquirers concerning the bad characters of others must generally be prepared to obtain the required information from very brief remarks, or even from delicate hints, which, to unobserving persons, may seem to be entirely insufficient for the purposes.

Probably one of the best methods for determining the business characters and responsibilities of proposed tenants will be the employment of the mercantile agencies which have been formed for the purposes of such investigations. The reports of the mercantile agencies are often very accurate and complete, giving statements of former occupations, general reputations, ownership of real estate or of other property, unsatisfied judgments and legal or financial difficulties of the persons or firms whose reputations shall be examined by

them. In this manner facts of importance, which may be discovered otherwise only with great difficulty, will often be disclosed.

There are several different methods by which tenants, although they may be entirely irresponsible themselves, may furnish satisfactory securities for the payments of their rents, and for the performance of their covenants. The first method to be mentioned, as perhaps the most common, is the furnishing of responsible sureties, or, in other words, the furnishing of responsible and satisfactory persons who shall agree to make good any deficiencies on the parts of the tenants. With regard to the responsibilities of sureties, the rules and suggestions which have already been given for the determination of the responsibilities of tenants, must be closely observed, with only such modifications as will be suggested by the fact that the sureties themselves may be neither tenants nor business men. Sureties should invariably be required to sign written agreements, by which they shall bind themselves to become sureties for the prompt payment of the rents and for the proper performance of all the covenants of the tenants, and by which they shall promise to pay to the landlords any arrears of rents and any damage which they may sustain by reason of the non-performance of the tenants' covenants.

In many cases, where the responsibilities of proposed tenants shall be partially established, though not to the entire satisfaction of the landlords, tenants may be required to furnish satisfactory sureties, in order that the landlords may have the advantage of additional parties, who, if necessary, may be called upon for the payment of the rents. Moreover, considering the fact that financial responsibility is, as has been suggested, often very short-lived, and perishable at the will of the possessor, sureties may well be obtained, when they may be without difficulty, even in cases where tenants shall be of undoubted responsibility. There are of course possibilities that sureties may be persons of independent wealth ; while to look for such financial conditions among tenants seems, generally speaking, to approach the unreason-

able, since persons of large means may be presumed to own their own residences, and generally not to be engaged in business occupations which will require the use of hired premises.

Tenants may also provide what appears to be a most satisfactory kind of sureties, by the employment of first-class surety companies, or other corporations which are organized for the purposes of guaranteeing the performance of the agreements of others; although, the theory (to be noticed shortly) that unusual expenditures which may be required of tenants for the consummation of their leases will result practically in the payment of the expenditures by the landlords, by corresponding reductions of the rents, will cause owners of real estate generally to go, not without hesitation, to this apparent extreme. In all cases of sureties, owners of real estate must make use of independent judgment applicable to the special conditions of the cases, computing, if necessary, the actual costs to them of the proposed sureties, and deciding from all the circumstances whether security, and if any, just what kind, will prove to be to their advantage.

With the exceptions which have been suggested, it may be remarked that, with respect to desirability, the method of sureties may be placed in the same class with that of responsible tenants, both methods depending eventually upon questions of personal responsibility.

A method of partially securing the rents of tenants who shall be of little or no financial responsibility, and who shall be unable to furnish satisfactory sureties, is that of requiring the tenants to deposit with the landlords certain sums of money, as securities for the proper fulfilment of their agreements. In such cases, carefully worded clauses, concerning the deposits, should be included in the leases, in order to avoid the misunderstandings and trouble which will otherwise result in many cases. The clauses should contain statements to the effect that the tenants have deposited with the landlords certain stated sums of money as securities for the punctual payments of the rents, and for the faithful performance of the agreements on the parts of the tenants; that at

the expirations of the leases, and upon the proper performance of the covenants on the parts of the tenants, the landlords will return to the tenants the amounts which have been deposited (sometimes with interest at specified rates), or that the amounts which have been deposited shall be applied by the landlords to the payment of the last one, two, three, or four months' rents, as the cases may be ; and that, in case the tenants shall make default in the payments of their rents for the space of ten days after the same shall become due, or shall fail for the space of ten days to perform any other of their covenants, the landlords shall not be deprived of any of their legal rights and remedies, but that, in addition to their ordinary remedies, they shall have the right, upon notice, to pay to themselves, out of the deposited amounts, the arrears of rents or the damages which may have been sustained by reason of the failures of the tenants to fulfil their covenants. If properly employed, this method will often prove to be the best, if not the only available one, under the special conditions which have been mentioned, notwithstanding the probability of differences and difficulties with the tenants in cases where resorts to the deposited amounts by the landlords shall be necessary.

The conditions which are necessary for the success of the methods of deposits will be : first, that the rents shall be payable in advance ; second, that the amounts which shall be deposited as securities shall be sufficiently large ; and third, that the values of the deposits as securities shall not be injured by allowing tenants to become too deeply in arrears, or by allowing other damages to accrue without speedy settlement. If a tenant who shall have made such an arrangement with his landlord shall desire, for any reason which will not amount to a legal excuse, to vacate the premises which he occupies before the expiration of his lease, his course of proceeding will probably be to endeavor to accumulate arrears of rents, which shall be at least sufficient in amount to wipe out the amount which has been deposited as security. This having been accomplished, the tenant may quit the premises and throw up his lease, without further

able, since persons of large means may be presumed to own their own residences, and generally not to be engaged in business occupations which will require the use of hired premises.

Tenants may also provide what appears to be a most satisfactory kind of sureties, by the employment of first-class surety companies, or other corporations which are organized for the purposes of guaranteeing the performance of the agreements of others; although, the theory (to be noticed shortly) that unusual expenditures which may be required of tenants for the consummation of their leases will result practically in the payment of the expenditures by the landlords, by corresponding reductions of the rents, will cause owners of real estate generally to go, not without hesitation, to this apparent extreme. In all cases of sureties, owners of real estate must make use of independent judgment applicable to the special conditions of the cases, computing, if necessary, the actual costs to them of the proposed sureties, and deciding from all the circumstances whether security, and if any, just what kind, will prove to be to their advantage.

With the exceptions which have been suggested, it may be remarked that, with respect to desirability, the method of sureties may be placed in the same class with that of responsible tenants, both methods depending eventually upon questions of personal responsibility.

A method of partially securing the rents of tenants who shall be of little or no financial responsibility, and who shall be unable to furnish satisfactory sureties, is that of requiring the tenants to deposit with the landlords certain sums of money, as securities for the proper fulfilment of their agreements. In such cases, carefully worded clauses, concerning the deposits, should be included in the leases, in order to avoid the misunderstandings and trouble which will otherwise result in many cases. The clauses should contain statements to the effect that the tenants have deposited with the landlords certain stated sums of money as securities for the punctual payments of the rents, and for the faithful performance of the agreements on the parts of the tenants; that at

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The conditions which are necessary for the success of the methods of deposits will be : first, that the rents shall be payable in advance ; second, that the amounts which shall be deposited as securities shall be sufficiently large ; and third, that the values of the deposits as securities shall not be injured by allowing tenants to become too deeply in arrears, or by allowing other damages to accrue without speedy settlement. If a tenant who shall have made such an arrangement with his landlord shall desire, for any reason which will not amount to a legal excuse, to vacate the premises which he occupies before the expiration of his lease, his course of proceeding will probably be to endeavor to accumulate arrears of rents, which shall be at least sufficient in amount to wipe out the amount which has been deposited as security. This having been accomplished, the tenant may quit the premises and throw up his lease, without further

expenditure than the payment of the rent for as long a period of time as shall be equal to the amount of the deposit. And if, in addition, he can succeed in gaining a month or more of arrears over the amount of the deposit, the dishonest tenant will have no cause to find fault with the method of deposit which has been insisted upon by his landlord. In this supposed case lies the complete exposition of the conditions which are necessary for the success of the method of security which is now under consideration. The correctness of conclusions which have been reached in the supposed case having been granted (in fact they cannot fairly be avoided) the truth of the following statements must also be admitted:

Just in proportion to the periods in advance for which rents shall be payable, and just in proportion to the amounts of the deposits, as compared with the amounts of the rents, and just in proportion to the diligence with which landlords shall enforce the prompt payments of rents and the performance of all the covenants of the tenants, will it become more difficult for tenants to attain the conditions, with respect to arrears and defaults, which will permit them without loss to throw up their leases.

The demonstration of the conditions which are necessary for the success of the common method of deposits is, therefore, complete, and the consideration of the method may here be concluded with but one further suggestion. It is evident that the three necessary conditions which have been suggested will be to a certain extent interchangeable, and that the concurrence of all three conditions may be dispensed with, in certain cases, by a corresponding regulation of those which must be fulfilled. Thus, if the amount of a deposit shall be sufficiently large, as compared with the regular payments of rent, the requirement that the rent shall be payable in advance may be dispensed with, and the vigilance of the landlord may be somewhat relaxed. So, if the rent shall be payable at sufficient periods in advance, and the landlord shall be sufficiently prompt in the collection of it, the necessity for a large deposit will be correspondingly lessened. Nevertheless, the advantage of landlords will be best preserved

by the fulfilment of all the conditions, and especially by an insisting upon the condition of large deposits.

We now come to the consideration of the method of making the collection of rents sure, which, under proper conditions, may be regarded as the most perfect and satisfactory of all practical methods, to wit : that of requiring tenants to expend considerable amounts in the improvement of the premises, prior to, or as soon as possible after, the commencements of their occupancies. No argument will be necessary to prove the statement that a tenant who shall have expended large sums of money in permanent improvements upon his landlord's premises will be very loth to leave the premises before the expiration of his term for the purpose of avoiding the payment of the rent ; it is equally evident that, if the expenditures of the tenant shall have been properly directed by the landlord, they will be able to afford ample compensations for any losses of rents which the landlord may suffer by reason of the tenant's default in payment, or the temporary vacating of the premises. In a certain sense, therefore, the method will act as a twofold security, the peculiar advantages of which will be easily apparent from the consideration of the subject which follows.

With regard to the method which is in question, the objection that it will necessitate long terms, which will tie up and prevent the sale of real estate, and otherwise result to the disadvantage of the owners, and the much more formidable objection, which has been before suggested, that the total amounts of rentals will necessarily be reduced by the amounts which the tenants shall be required to expend upon the premises, may be offered, and must receive some consideration on the parts of owners of real estate.

The former objection, it is believed, may be sufficiently disposed of by the proposition that owners of real estate have only to oppose to the shrewdness and abilities of prospective tenants the same qualities, to higher and more cultivated degrees, upon their own parts, to assure themselves that they will not be worsted in the rivalry of calculations concerning the future; and that the employment of the

same talents and abilities may determine satisfactorily, for the owners, the effect of the long terms upon the values and salableness of real estate.

The second objection may not be so easily disposed of, for the reason that it involves the consideration of figures, the results of which will often be too definite and plain to be overcome by the manifestation of ever so great abilities on the parts of owners of real estate. If we suppose the simple case of a one-story building, the regular annual rent of which, and the rent of similar buildings in the particular neighborhood, shall be one thousand dollars, it is plain that the ingenuity of the owners will be taxed to the utmost if they shall attempt to persuade a prospective tenant to accept a lease of the premises at the same rents, and also to expend the sum of five thousand dollars in adding a second story to the building, the improvement to revert to the owners at the expiration of a lease for the term of five years. For the proposed tenant will be in need of no rare talents to perceive that, under such an arrangement, his annual rent will amount to the sum of two thousand dollars, plus the interest upon, and the loss of the use of, the five thousand dollars which he will have expended, plus his loss of occupancy during the course of the completion of the improvement, and that he may easily do better elsewhere.

But the statement that this method will involve serious losses to the owners of real estate will not necessarily be true in all cases. Tenants by such an arrangement will obtain actual and substantial advantages from the facts that they will receive leases for longer terms at known and certain rentals, and that the improvements which they shall make upon the leased premises will be in the line of special conveniences and facilities for the purposes of their own occupations; and for these benefits they should be willing to pay fair prices. Owners of real estate, having taken care that the improvements which shall be made by their tenants are actual benefits to the premises, may also take into consideration the values of the improvements, which will revert to them without direct expenditure, before determining

the total profits which will accrue to them from the transactions.

Between these two propositions, each properly adjusted by the skill of landlords, will lie the practical overcoming of the objection which is at present under consideration, which overcoming of the objection should result in no greater losses to landlords than will be fully compensated by the benefits which will be derived.

With respect to real estate the purchasing of which, and the enhancements in the values of which, have exemplified to a high degree the benefits of the skill and ability for the fostering of which much of this volume has been devoted, it may be stated that the objection in question will be of little account, the fortunate owners of such real estate being (as has been explained) in positions which will not require the obtaining of maximum rents for their premises.

The remaining advantages of the method which is under discussion are : the important increases in the rentals which will eventually result from the improvements ; a great decreasing of the cares and difficulties which appertain to the management of real estate generally ; and the possibility of obtaining valuable improvements without the direct expenditure of money.

The possible advantages of this method of securing the rentals from real estate having been established, it will be necessary to take up the consideration of the conditions and circumstances upon which the perfect working of the method will depend. The first condition which will be necessary for the success of the method will evidently be, that the agreements of proposed tenants with regard to the making of expenditures upon demised premises shall be assured of fulfilment. It will be scarcely necessary to remark that the danger of disagreements and the consequent failures of the proposed arrangements will be at its greatest before the expenditures by the tenants shall have been made, or, in other words, before the securities shall have been fully established ; and, therefore, that there will be need of great care and attention on the parts of owners during the

construction of the improvements. For in the establishment of the securities lies the gist of the entire plan. Especially will there be need of caution in this respect when the nature of proposed improvements shall be such as to require the tearing down of portions of the demised premises, or such preliminary alterations as will cause serious injuries to the premises, and losses to the owners, in case the proposed improvements shall not be completed. The usual plan of assuring the completion of promised improvements is that of requiring tenants to furnish good and sufficient bonds, executed by themselves and by one or more other responsible persons, conditioned for the faithful performance of the agreements concerning the improvements, and providing for the payment to the owners of all damages which may occur to them through failures of the tenants to complete the proposed improvements. The satisfactory working of this plan evidently will depend upon the financial responsibilities of the bondsmen ; and, according as there shall be possibilities of injuries to the owners, through the failures of tenants to complete improvements which have been agreed upon, owners must apply with diligence the rules and principles which have already been explained for the determination of personal financial responsibilities.

For the purposes in question, bonds, upon the legal sufficiency of which so much may depend, must be carefully drawn so as to include all necessary covenants and recitals and so as to bind, jointly and severally, all the persons by whom they shall be signed. Ordinarily, it is plain that the greater the number of the signers of such a bond shall be, the greater will be the chances of responsibility among them. For the purposes which are under consideration, the plan most perfect in theory and in practice will evidently be the depositing, by the tenants with the landlords of certain sums of money, which shall be ample for the protection of the landlords against the failures of the tenants to complete the proposed improvements; written agreements being had providing for the payment of all damages to the landlords out of the amounts which shall be deposited, and for the return of the

amounts to the tenants upon the proper completion of the improvements. In cases where proposed improvements shall not be very extensive, the last-mentioned plan may often meet with no serious objections on the parts of tenants ; but in cases where large amounts are to be expended in improvements, and extensive damages may possibly ensue, the plan will be generally impracticable, because it will involve the possession, on the parts of tenants of available money to extents which will be beyond the means of the majority of tenants. The advantages of the plan are, however, so manifest that its proposal, and a reasonable attempt for its consummation, should be neglected in no case where it will not be entirely out of the question. In lieu of actual money, various other kinds of securities, such as government bonds, or the bonds of satisfactory States or cities, or special temporary mortgages upon real estate which shall be owned by the tenants or by their sureties may be deposited with the landlords, with written agreements covering all the necessary circumstances in the transactions. But in all such cases the prudence and sagacity of owners of real estate must be brought into active operation in order to assure themselves of the actual values of the securities, and of ample margins in their favor with respect to the values.

In all cases in which tenants shall agree to make improvements upon the real estate of their landlords, the clauses in the leases, which provide for the improvements, should specify the exact kinds and natures of the proposed improvements, and should require the full completion of the improvements at as early specified times as will be practicable under the circumstances.

Before the repayment to the tenants of amounts which shall have been deposited for the purpose of assuring the satisfactory completion of improvements, and before consenting to the discharge of sureties who shall have been provided for the same purpose, landlords will do well to satisfy themselves that the costs of the improvements shall not be legally chargeable against the real estate in the way of liens for the protection of mechanics and contractors,

which are provided for by the statutes of the different States; and, if so chargeable, that the claims of all persons who may be by law capable of establishing such liens have been fully paid and satisfied.

As may easily be surmised, from the analogy between the method of securing rents which is now under consideration, and the method of deposit which has been before described, an essential condition for the successful operation of the former method will be that the amounts which shall be expended by the tenants in improvements shall be sufficiently large; and, with regard to this condition, but little statement will be necessary by way of further elucidation. That the security, in such cases, will be the better just in proportion as the improvements shall be extensive and costly, is a fact which will not be disputed; it follows that the aims of landlords may judiciously be to increase these expenditures to the greatest extent which shall be consistent with reason, taking into account the effect upon the terms of the leases and upon the amounts of the rentals.

As a minimum, an amount of expenditure which shall be equal to a quarter's rent of a particular premises may be suggested; although the specifying of an exact relation between the minimum expenditure and the rent, which will suit even the majority of cases, will probably involve the risk of attempting too much in the direction of simplification.

Other and very important conditions which must be fulfilled, as conditions precedent to the success of the method of improvements, are: that improvements shall be fixtures which will become the properties of the owners of the real estate at the expirations, or sooner terminations, of the leases; and that they shall be of such characters as to make the premises actually more valuable from the points of view of the owners. That improvements which shall belong to tenants, and which may be removed by them at pleasure, will afford landlords any better direct security than the possibility of levying upon the improvements, for the collection of judgments which may be obtained against the tenants, will evidently be an absurd proposition. Therefore, all

improvements which shall be easily and quickly removable from the premises are to be eliminated from the consideration, as altogether out of the question ; and the leases should clearly specify and provide that the improvements shall, at the expirations or sooner terminations of the leases, become the sole and absolute properties of the owners of the real estate, free and clear of all liens or incumbrances.

There are many kinds of improvements which, while they may require large expenditures by the tenants, may be of comparatively little value to the owners of real estate after the removals of the tenants who shall have made the improvements. Of this nature are all improvements of such unusual characters as to be of use only to a very small proportion of tenants generally, such as trade fixtures, and conveniences for particular and unusual branches of business ; special arrangements of rooms, partitions, doors, lights, stairways, chimney flues, etc. ; and supports, foundations, and other provisions which are necessary only in cases of specially arranged engines and machinery. Against these and similar improvements owners of real estate must be cautioned ; for, while they may afford ample securities under the special conditions of particular tenants, owners will often experience the greatest difficulties in obtaining subsequent tenants for the premises, except at serious sacrifices of rentals and improvements, perhaps by incurring the expense of putting the premises in the conditions in which they were, before the addition of the so-called improvements. So, also, the proposed improvements may be unsuitable for the neighborhoods in which the premises shall be situated. And, in brief, it may be said that all the considerations which will go to make up the real values of improvements to real estate generally, and which have been carefully explained in the earlier pages of this work, must be taken into the account, and provided for, by adequate clauses in leases, specifying in detail and at length the exact characters of the improvements, and requiring that the improvements shall be made in first-class, workman-like manner, under the supervision of regular and competent architects, in accordance with the laws and

regulations of city departments and authorities, and to the satisfaction of the owners of the real estate. Still another condition which will be necessary for the success of the method of improvements is, that the improvements shall be made secure against destruction ; and for this purpose landlords must resort to the ordinary methods of fire insurance which have been already sufficiently explained.

A final suggestion for the success of the method which is under consideration will be in the nature of a precaution against losses of the final payments of rents. If the payments of rents shall not be made in advance, owners may experience considerable difficulties in collecting the last payments under the terms of the leases ; for a tenant, having fully exhausted the term of his lease, and having to surrender the premises and the improvements at the same time, will, if dishonest and irresponsible, refuse to pay the last instalment of his rent, and the landlord will be put to the ordinary and often unsatisfactory remedy of a suit at law for its collection. Obviously, in such cases, the precautionary measures to be adopted will be to require tenants to furnish securities for the final payments, or to require the final payments, if not all payments, during the terms of the leases, to be made in advance. If the former measure shall be employed, the requiring of covenants in the leases to the effect that tenants will, at specified times before the expirations of the leases (six months, one year, or two years, for example), furnish satisfactory and specified kinds of securities for the final payments, may be suggested, since the furnishing of securities as far in advance as the commencements of the terms will allow of too many possibilities that the sureties may be found to be irresponsible at the expirations of the terms. In the latter measure, as in all cases of payments of rents in advance, the periods in advance for which the payments shall be made should be as long as possible. Moreover, if payments of rents during entire terms cannot be made in advance, the advantage of the owners will be best served by making, not only the last instalments payable far in advance, but also by requiring that the general periods, toward the

ends of the terms, during which payments are to be made in advance shall be as long as possible—for instance, in a twenty years' lease, the rents for the last one, two, three, or five years may be made payable quarterly in advance. This appears to be a wise precaution in view of the fact that, if the rents for portions of the terms shall not be payable in advance, and those for other portions of the terms shall be payable in advance, two payments, in a particular case, will come together at the date of transition, and the amount of the double payment may be sufficient to cause the tenant to avoid payment by vacating the premises, unless he shall be restrained by the fact that, by so doing he will sacrifice a long and valuable period of occupancy.

A form of leasing real estate which appears to be most advantageous to the owners, inasmuch as it exemplifies in a high degree the method of securing rents by improvements, and in other respects which will be apparent without difficulty, is by means of what are commonly known as "ground leases," the popular name having been derived from the fact that such leases ordinarily apply only to vacant or unimproved land.

The simplest form of ground lease may be described in the following manner :

A ground lease of real estate gives to the tenant a comparatively long term, and provides that the tenant shall erect upon the land certain specified buildings, at his own cost and expense. The tenant agrees to pay all taxes, assessments, and charges of every description, which are or may be liens upon the premises ; to insure the buildings for the benefit of the landlord ; to rebuild the buildings in case of destruction, the insurance being applied thereto ; and to pay to the owner of the land certain rents, specified in amounts and as to the times and manners of payments, and which may be uniform throughout the term, or may increase during certain periods of the term. At the expiration or termination of the lease the improvements may revert, without cost, and free and clear of all incumbrances, to the owners of the land ; or the lease may require the owners of the land to purchase

the improvements at appraised values, according to the length of the term, the cost of the improvements, and the amount of the rentals.

The terms of ground leases are sometimes very long (ninety-nine years, or even a greater number being not unusual), and sometimes, though more rarely, the terms extend indefinitely — forever — in which cases the leases are said to be perpetual, and the term "fee-leasehold" has been applied to the estates of the tenants. Another form of ground lease is similar to the one which has been described, except that the term is usually much shorter, and the lease contains a provision that, at the expiration of the term, the landlord shall have the option of purchasing the improvements at specified or appraised values, or of granting a renewal of the lease for a specified term and at specified or appraised rents.

A ground lease may specify that there shall be several successive extensions (or even for an indefinite number — forever), with or without an option of purchasing the improvements, and that, at the final expiration or termination of the lease, the improvements shall revert to the landlord, or that they shall be purchased by the landlord at appraised values.

With regard to these two methods of acquiring finally the improvements, it is evident that the cost of the improvements, together with the elements of the amounts of rentals, and lengths of terms, will go far in deciding between the two. But where a choice in this respect shall be offered to the owners of real estate, the method by which the improvements will revert to them without cost is to be preferred in all cases where the owners of the real estate may otherwise run the risk of serious embarrassment by being compelled to pay large sums for the improvements, which, under the certainty that they will not be lost by the tenants, may assume far greater proportions than the landlords may have had reasons to expect.

A common provision in ground leases, with regard to the amounts of the annual rents, is that, for the first regular term (the term before the first renewal) the rent shall be equal to a clear, net five per cent. upon the value of the

particular demised land; that, for the term of each subsequent renewal, it shall be equal to a clear, net five per cent. upon the appraised value of the land at the time of such renewal; and that in no case shall the annual rent for the term of a renewal be less than that for the preceding term. An arrangement which will, in certain events, and in the majority of cases, prove to be of much more advantage to landlords, will be to the effect that the annual rentals, at each renewal, shall be equal to a clear, net five per cent. of the highest value which the particular land shall have acquired at any time during the expired portion of the term; such an agreement will protect the owners against any loss of rents which may occur by reason of the coincidence of hard times and depressed real-estate values with the times of the renewals.

The principal general characteristics of ground leases having been sufficiently explained, their peculiar advantages may be stated as follows:

First, there will be a remarkably perfect security for the rentals; for, with proper care in the drawing of the leases and in the securing of the improvements, a necessary loss of rentals will imply a well-nigh impossible concurrence of such events as the failure of the tenants, the destruction of the buildings, the failure of the insurance companies, and the failure of the land to enhance in values.

Second, investments of this description will have the advantages of permanent and lasting characters, and of the many attendant benefits.

Third, investors in ground leases will experience great relief from the cares and difficulties which are inseparable, generally speaking, from the management of improved real estate. For, with well-arranged ground leases, the necessary tasks of the landlords may be reduced to the simple and precautionary ones of looking up unpaid taxes and assessments and notifying the tenants to pay any arrears; occasionally making inspections of the premises, in order that they may not be allowed to become out of repair; and keeping in mind the dates of expirations of insurance policies, in order that they may not lapse or become inoperative.

Fourth, ground leases will provide the advantageous improvement of real estate which, because of lack of means, may otherwise remain unimproved and useless, or pass out of the hands of the owners, or burden the owners with heavy and uncomfortable mortgages.

Fifth, taking into consideration the values of the benefits which have been already mentioned, ground leases will not fail, in the long run, to furnish highly satisfactory pecuniary returns upon the amounts which have been invested.

The nature of this method of leasing real estate being somewhat exceptional, because of the fact that errors or mistakes which may be made cannot be cured in short times by the expirations of the leases, and by the changing of tenants and conditions, but must continue, with all the difficulties which they may provoke, probably during the remaining years of the investors' lives, such transactions should be conducted with extraordinary care, investors realizing fully the fact, that, if satisfactorily consummated, the results will afford ample compensations for the thoughtful care which shall have been bestowed.

First of all, it will be necessary to bring to bear upon the propositions of proposed ground tenants, or upon the propositions which are to be made to them, careful and minute considerations of all the points which may be involved. The numerical elements must be computed, over and over, to certainties and to niceties, until the owners of the real estate shall be satisfied beyond doubts that the complicated problems, which are made up of the amounts of rents, lengths of terms, taxes, assessments, and such items, the costs and values of improvements, and the future values of land and improvements, have been solved to their best advantage. The characters of proposed improvements, and the manners of their construction; the uses and purposes to which improvements are to be put; the probable effect of improvements upon the values of the real estate, at the far-distant expirations of the proposed leases; the reputations of the proposed tenants, their characters, and even the reputations and characters of their probable heirs and successors; the

probable results of the proposed leasings to the interests of the heirs of the owners of the land—these elements may well receive careful attention before final conclusions shall be reached. All legal and technical points must be decided by, and the leases and other agreements must be drawn by, competent lawyers, who are accustomed to work of this particular kind; and all details which may be contained in the leases must receive the care and consideration which the importance of the transaction demands.

In addition to the covenants and clauses of ground leases, which have already received sufficient explanation, may be mentioned the following important ones :

Ground leases should contain covenants against nuisances which may be to the effect that the tenants will not erect, maintain, or allow to be erected or maintained, upon the demised premises, any slaughter-house, brewery, distillery, stable, forge, foundry, factory, or any other house or building, used or intended to be used for any noxious, noisome, dangerous, or offensive trade or business. In the proper cases, they should contain clauses providing for the valuations or appraisements of the lands and improvements, for the purposes of fixing the rentals for the terms of renewals, and of determining the prices which must be paid for the improvements by the landlords. Such provisions may require the appointment of appraisers of a certain designated class, such as freeholders in the particular neighborhoods; and, in case of failure to agree, the appointment by the appraisers of referees whose decisions shall be final and binding. A ground lease may contain a clause concerning the assignment of the lease, which, if not altogether forbidding assignment, may provide that in case the tenant shall desire to assign the whole or a part of his interest in the lease, he must submit the terms of the proposed assignment to the landlord, and give him the option of assuming the proposed assignment; or the covenant may provide that the tenant shall assign his interest only to such parties as shall be satisfactory to the landlord. The covenant by which the tenant agrees, at all times, to insure the buildings against loss by fire, for

the benefit of and in the name of, the landlord, may also provide that, in case of the partial or complete destruction of the buildings, by fire or otherwise, the tenant shall at once rebuild the same at his own expense, and that any insurance which may be collected by the landlord shall be applied towards the cost of the rebuilding. Other agreements which may be included in ground leases are : one to the effect that the tenants will not allow the premises to become dilapidated or in any way out of repair, and one which shall specify the covenants which must be contained in the renewal leases, which agreement must make provisions for any differences between the original leases and the renewal leases which may be due to changes in the rents, the final purchasing or reverting of the improvements, and the circumstances attending the final expirations of the terms.

As may have been surmised without difficulty, from the preceding statements and suggestions, the advantages of ground leases are not to be derived indiscriminately from all kinds of unimproved real estate. In order to be available for the purposes of ground leases which will include the benefits and advantages which have been mentioned, real estate must possess considerable present values, and, at least in the judgments of the tenants, greater prospective values.

It may be said that the prospective values, or the expected future values, of land are the chief moving causes of ground leases, the theory of the tenants being that, by the rapidly advancing values, plainly foreseen by them and unlooked for by the landlords, they will obtain the rich rewards which surely come to those whose fortunate visions are able to extend, with no mistaken gaze, into the seemingly uncertain events of the future.

And so it is that, in a certain sense, the owners of available real estate and enterprising tenants, each reaching, sometimes with strained and labored perception, into the years which are yet to come, endeavor, each unseen by the other, to snatch from the coming years the substantial prizes which belong always to the discoverers. Often the prizes go to the tenants; and there are many cases in which tenants

having valuable leaseholds at almost nominal rents receive handsome profits in the way of rents from sub-tenants, or are able to sell their bargains, and retire much the richer for their shrewd transactions.

A careful study of such cases will, it is believed, disclose the following facts, upon which the results seem to be dependent : First, such results are observed, more often than otherwise, in cases where the terms of the leases are continuous, without renewals, and the rents uniform, or only slightly increasing throughout the entire terms. Second, in a large number of cases of this kind, the characters of the required improvements are poor, because generally not sufficiently defined in the leases. Third, in the great majority of such cases, the leases are made in the early stages of the development of the particular real estate, before the values have become sufficiently high to make the property generally desirable.

These observations (as well as the conclusion that, in the long run, and under the conditions of renewals at rentals which are based upon percentages of appraised values, the theory of ground leases must work out to the advantage of the owners of the land, and to the disadvantage of the tenants) seem, independent of other considerations, to be abundantly warranted by the facts of continually decreasing rates of interest, and of continually decreasing returns from real estate of the most valuable kind, when compared with actual market values.

The final correct conclusion appears to be that the time is not far distant when the prevailing rates or percentages which shall be used as bases for the determination of the rentals reserved in ground leases of considerable terms will be materially below the net five per cent. of the appraised values which has been commonly accepted as correct.

The implied warning against the too hasty granting of ground leases of lands, even of the better descriptions, and the implied prohibition against ground leases of lands of other descriptions, must not be neglected. Nevertheless, watchful investors who shall be able to perceive the lower

basis of rentals, which has been suggested, actually approaching, will not hesitate, before deciding upon the granting of ground leases longer than will be necessary for them to determine, with accuracy, the comparative advantages of leasing at once, in order to obtain the higher basis of rentals which seems to them about to disappear, or delaying the leasing, at the risk of finding a lower basis, for the sake of the high valuations, which they are confident cannot fail to appear.

Determinations of this character will indeed prove to be difficult, and the setting forth of definite rules which will be of general benefit in this respect, is obviously a matter far too difficult to be practicable. Nevertheless, there appears to be excellent warrant for the suggestion that in the dilemma which is under consideration investors may safely incline towards that solution which will maintain for them the five per cent. basis. More especially will this suggestion appear to be well founded, when investors shall take into consideration the facts that the basis of rentals, having been once agreed upon, in any particular case, will, in all probability abide for many years, and that, after all, reasonably early or reasonably late consummations of ground leases of the proper characters will have no such vital effects upon the transactions as may be generally supposed, since the earlier shall be the commencements of the terms the sooner will arrive the times of the renewals and of increased rentals; and in like manner, the sooner will arrive the times of the final terminations of the leases and of the reverting of valuable improvements.

The last of the three conditions, which, in the earlier pages of this chapter, have been set forth as including all the requisites for the advantageous leasing of real estate the character of which is itself satisfactory—that the characters of the tenants, and the uses of the real estate shall be satisfactory—remains now to be considered.

At first glance, the personal characters of tenants, as individuals, may appear to bear but slightly upon the general subject, inasmuch as the owners of properly rented real

estate are presumed to be secured against injury and damage which they may sustain at the hands of their tenants. But a closer scrutiny of the subject will make manifest a contrary state of affairs which, in practice, will be uniformly developed. And this state of affairs may best be made manifest by supposing two cases which shall involve the two extremes.

In the one case, the tenant will be honest, industrious, thrifty, punctual, moral, respectable, peaceable, reasonable, considerate, and orderly. Being honest, industrious, thrifty, and punctual, he will pay his rent promptly and faithfully perform all his agreements. Being moral and respectable, he will bring no discredit or bad reputation upon the premises which he occupies. Being peaceable and reasonable, he will make no unnecessary trouble or unpleasantness for his landlord or for his neighbors. And, being considerate and orderly, he will not abuse the premises which he occupies, but, on the contrary, will take pleasure in keeping them in a tidy, well-preserved, well-appearing condition.

In the second supposed case, the personal characteristics of the tenant will be in all respects reversed. Being dishonest, lazy, thriftless, and careless, he will cause constant difficulty and delays in the collection of his rent, and in the enforcement of his agreements, compelling his landlord to resort constantly to legal remedies against him or against the surety. Being immoral and disreputable, he will soon bring upon his landlord's premises the reproaches of his more respectable neighbors, and the lasting effects of a bad reputation, perhaps making his landlord legally responsible for his unlawful acts. Being quarrelsome and unreasonable, he will be the cause of continual turmoil and strife, not only between himself and his landlord, but with the neighboring tenants far and near, and his conduct may be the means of causing, for his landlord and for the owners of neighboring premises, serious difficulties with tenants, losses of rents, vacancies, and general injuries to the business of the neighborhood. And, being inconsiderate and disorderly, he will abuse and disfigure the premises which he occupies, in every possible manner, allowing them to become out of repair, dilapidated,

and filthy, calling for the interference of the health department and other departments of the city in which the premises shall be situated.

As between these two extremes, the important bearing of the personal characteristics of tenants upon the general subject of the leasing of real estate, no longer admits of dispute.

For the securing of tenants of the character of the one in the first supposed case, landlords may well offer very considerable inducements in the way of long terms of occupancy, favoritism in the matter of repairs, and even in material reductions in the rents, and will still find themselves, at the expirations of the terms, not a whit the losers by their generous treatment of deserving tenants. And it is equally true that no reasonable amount of security, protection, advantageous agreements and promises, or even advances in the amounts of rentals, will be able to persuade sagacious landlords into the accepting of such tenants as the one who has been described in the second supposed case.

The personal characters of tenants are, therefore, matters which should be made the subjects of some investigation on the parts of owners of real estate, more or less particular and careful according as there will be greater or less opportunities for injuries and difficulties which shall be due to the kinds and characters of the real estate the leasing of which is contemplated.

The methods of investigation which will be most readily suggested, for the purpose of determining the personal characters of tenants, are : that of the examination of references, under the guidance of the suggestions which have been made in this respect, and paying particular attention to the statements of former landlords and their agents ; careful scrutinies of the premises which have been last occupied by the proposed tenants, especially their former places of residence ; and inquiries among the former neighbors of proposed tenants. In the majority of cases, investigations along this line need not be at all burdensome ; for the personal characters of tenants will often sufficiently appear from the ordinary investigations concerning their responsibilities. But, in

special cases, where very much will depend upon the personal characters of tenants (the leasing of an expensively furnished house will afford a striking illustration), special investigations must be carried on with care, and independently of all others.

The uses and purposes to which improved real estate shall be put by the occupying tenants are evidently matters of great importance to the owners of real estate, since the items of rents, expenses, sinking funds, and incomes, in addition to the element of the actual endurance of premises, will vary greatly for different businesses and manners of occupation. With regard to improved real estate which shall be rented exclusively for the purposes of residences and homes, the special efforts of the owners are to be directed towards the obtaining of tenants who, independent of the conditions which go to secure the rentals, shall be, first, in all respects reputable, and second, so circumstanced that such elements as danger of fire, wear and tear, and other injuries to property will be the smallest possible. The danger that premises will be used for purposes of the most disreputable kind is at its greatest with real estate of this kind. And this danger is to be carefully guarded against, because for certain owners of real estate, the probabilities that their rentals have been earned by the shame and disgrace of their fellow-beings, and that their properties may be the media of such conditions, cannot fail to be abominations; and also because the law very properly makes landlords, to certain extents, responsible for the occupations of their tenants, and often punishes landlords for allowing their premises to be used for unlawful purposes.

The precautions which are to be taken against such occupations are : the careful and intelligent examination of references; the exercising of sound judgment and discretion with regard to the statements and general appearances of proposed tenants, and the including of proper restrictions in the leases; or the insisting upon only short-lived tenancies (such as from month to month) in all cases where there shall be grounds for reasonable doubts.

Concerning the elements of danger from fire, wear and tear, and injuries to premises, evidently they will be greater with tenants having large families than with those having small ones, and greater with young than with old persons. Boarding-house keepers, school teachers, and families containing numerous children, are, therefore, alike shunned by the more careful landlords. For the little ones, however, it cannot be said too often that they are, and must be, the best of all indications of household purity and morality; whether it be because they are incumbrances too heavy for the purposes of the breakers of laws and of morals, or because the artless smiles of childhood stab, too deeply for endurance, the wretched hearts of the wretched doers of evil.

Concerning real estate which is to be used for the many purposes of trade and business, it must be remarked that the particular uses and the effects of the uses upon the clear returns from the investments will require a very careful consideration.

There are many unlawful trades and occupations, such as the keeping of pool rooms, policy shops, gambling places, places for the purposes of confidence swindles, counterfeiting, receiving stolen goods, etc., which, except for the purpose of assuring their complete avoidance, may well be passed over without even a casual mention. The occupancy, for such purposes, of premises belonging to landlords of established good reputations will seldom be proposed, except under cover of misrepresentations with regard to the proposed kinds of business. And, even under such circumstances, well-reputed owners of real estate will be comparatively free from annoyance by the managers of unlawful businesses of the kinds which have been mentioned. The best general precaution against the dangers of such illicit uses of their premises, will therefore be the establishment of reputations which will preclude the possibility of consent to the unlawful uses under any circumstances. There are, however, cases in which the managers of unlawful businesses have such confidence in their abilities to escape the penal consequences of their crimes, and at the same time

such reliance upon the presumed stupidity of landlords, that they will attempt to get possession of respectable premises, trusting in one way or another to hold possession in spite of the landlords. Careful investigations concerning the characters of proposed tenants, and the employment of a general shrewdness on the parts of landlords, will be sufficient for the keeping of such tenants entirely out of possession; and proper restrictions contained in leases, and the taking of prompt legal measures, will be sufficient to oust such tenants if, by failures of the first-mentioned precaution, they shall have succeeded in obtaining the possession of premises.

There are numerous businesses which are connected with the manufacture and sale of the various kinds of intoxicating liquors, and which, according to the individual opinions of landlords may be considered by some as legitimate and allowable, because they are not unlawful, and by others as entirely beyond the rightful contemplation of moral or Christian landlords, because they tend always to breed crime and to degrade humanity. So there are many branches of business, such as billiard saloons, theatres of the vaudeville type, etc., which, upon moral grounds, may or may not be acceptable to owners of real estate, according to the views of the individuals.

It is not the province of this work to **intrude** moral refinements upon those for whose guidance in matters of another kind it has been written; neither is it the province of a work of this nature to deny that, in all cases where the law shall not specify against the morality of occupations, owners of real estate must have the moral right to judge for themselves. It is quite commonly accepted as a general fact that branches of business of the kinds which have been mentioned will often pay large rents, and furnish satisfactory securities—a fact which must at least suggest that some difficulty is experienced in the hiring of premises for such uses, or, in other words, that there are many owners of real estate who are unwilling that their premises shall be used for such purposes.

In case it shall be decided that this general class of businesses is not to be excluded from the lists of occupations

which are properly available for the purposes of leasing real estate, some extra precautions will be necessary in order to protect landlords against possible difficulties which, in ordinary cases, need not be considered.

Special attention should be given to the characters of the securities, and to the agreements which shall be made concerning them ; that the securities may be ample to cover all possible difficulties with the public authorities, growing out of the legal responsibilities of landlords for the misdeeds of their tenants ; and that the agreements may be legally sufficient for the application of the securities to the desired purposes. Especially should landlords provide for their protection against the effects of the statutes relating to the sale of intoxicating liquors called the "Civil Damage Acts," which in some of the States make the owners of real estate responsible for certain damages resulting from the acts of those who shall become intoxicated upon their premises.

Many branches of business are of such characters that the increased danger of fire which is involved will be evident without difficulty. Thus, carpenter shops and all kinds of wood-working establishments, factories which deal largely in explosive or combustible materials, and stores for the selling of fireworks, ammunition, certain kinds of oils, or other inflammable goods, will evidently greatly increase the rates of insurance upon buildings in which they shall be located. Insurance companies classify nearly all branches of business with regard to the risks of fire which they will involve, and the consequent rates of insurance which will be charged. Owners of real estate must, therefore, ascertain the effects upon insurance rates of the uses to which it shall be proposed to put their premises before determining upon the amounts of the rents which shall be asked ; and, for this purpose, the regular insurance agents who are employed by the owners should be consulted in all cases where there shall be doubts, especially in all cases where, because of the large amounts of insurance which will be affected by increased rates, the increase in the cost of the policies will be considerable.

In view of the fact that, during recent years, large numbers of incendiary fires have occurred among tenants of a certain class (which need not be here specified), the purpose of which is the defrauding of insurance companies, care must be taken, when examining the references of proposed tenants, to inquire particularly concerning any fires which may have occurred in premises which have been formerly occupied by them. The unfortunate leasing of real estate to tenants who have previously excited the suspicions of insurance companies may result in entire refusals on the parts of the companies to insure premises, at any rates, thus placing the owners almost at the mercy of the dangerous tenants.

The differences between various kinds of business, with respect to wear and tear, probable damage from other causes, cost of supplying heat, light, power, etc., must come under the careful considerations of owners of real estate. The question of wear and tear, and other injuries to buildings, may be of very great importance ; for, in cases where buildings from such causes as weakness or lightness of construction shall be entirely unfitted for heavy and racking businesses, the buildings may be entirely destroyed by collapse ; and the owners, in addition to the loss of their buildings, may thus be put to heavy costs for personal and other injuries.

Owners of buildings should know, by consultation with architects, or otherwise, the strains and loads for which their buildings have been designed, and should limit, by provisions in the leases, all tenants to businesses which will be safe in this important respect.

Concerning the general effect, upon expenses such as repairs, heat, light, power, water, etc., of the various businesses for which real estate may be used, owners of real estate may readily educate themselves to a habit of approximate estimation which will in general prove to be sufficient for the purposes ; and this habit may be acquired by observing carefully, when opportunities shall be offered, the manners in which various branches of business are commonly conducted.

Thus it will be observed, if not learned by the simple application of ordinary information, that trades and businesses which require the constant carrying about of heavy materials (such as the manufacturing of heavy and cumbersome articles, the selling of stoves, plumbers' supplies, metals, and heavy hardware) will tend to produce excessive wear and tear; that the using of heavy machinery, such as is employed in machine shops, and by lithographers, printers, etc., will tend to rack and wear greatly buildings which have not been especially designed for such purposes; that businesses which require the storing of large quantities of heavy or very compact materials, such as iron pipes, lead pipes, grain, coal, etc., will produce excessive strains upon the floors and walls of the buildings which they occupy; that businesses which are necessarily carried on at night as well as by day, will require more light and heat than those which are conducted only during shorter hours; and that businesses which will require the use of steam, and also such businesses as restaurants, laundries, etc., will cause large bills for water rates.

The construction of buildings in such manners that they shall be suitable to the businesses for which they are to be used; or, inversely, the fitting of the uses to the characters of the buildings, will, to a great extent, remove the difficulties of excessive wear and tear; and the expenses for such items as heat, light, water, etc., are to be arranged for by corresponding adjustments of the rentals. In all cases where proposed tenants shall be, during the negotiations, engaged in the same kinds of business at other places, landlords may be able to form fairly correct estimates of the expenses which must be anticipated from the renting of their premises to the proposed tenants by examinations of the premises which are then occupied by the proposed tenants, and by inquiries of previous landlords and agents. By such means also the special amounts of wear and tear, which are dependent upon the particular manners in which proposed tenants shall conduct their businesses, may be approximated; for it is evident that all persons who shall be engaged in the same kinds of business will not manage their businesses in the same

manner with respect to the effects upon the premises which they occupy.

Inquiry may also be made into the details of a particular business, and agreements may be made with the tenants concerning the manner in which the business shall be conducted, with a view to reducing the costs of repairs, insurance, etc. In this manner businesses may sometimes be made satisfactory to the insurance companies, and the wear and tear may be materially lessened by the regulation of comparatively unimportant details.

The general suggestions which have been made may properly be supplemented by more particular references to branches of business which are especially desirable, because of the small amounts of wear and tear, and the slight danger of fire which they will involve; and to trades and businesses which, because of peculiar effects upon the premises which they occupy, should be either avoided or carefully provided for.

From the standpoint which has been under consideration, probably the most desirable kinds of trades and businesses for the occupancy of leased premises will be those which necessarily require more or less elegant, costly, and easily disfigured fixtures of their own, or which deal in costly and easily injured goods; for such businesses must necessarily require a great deal of care among their employees, with regard to the treatment of the premises, lest their own valuable properties shall suffer injury. In this class of businesses may be included banks, savings banks, financial institutions generally, handsomely appointed offices, studios, drug stores, art stores, jewelry stores, stores for the sale of gold and silver ware, etc.

Another class of businesses which is generally desirable for the purposes of tenancies is that in which the goods which are dealt in are light, frail, or easily marred or disfigured; in which class may be included dealers in artists' materials, optical goods, chemical apparatus, surgical instruments, fancy goods, hats and millinery, stationery and books; and also certain kinds of shoe stores, clothing stores,

and dry-goods stores. So, according as they shall be conducted, may be desirable, in the respects which are under consideration, toy stores, photograph galleries, light hardware stores, and stores for the sale of china and glassware, expensive kinds of gas fixtures, house furnishing goods, wall paper and house decorations, first-class furniture, etc.

Businesses which may ordinarily be regarded as producing excessive wear and tear upon floors, walls, doorways, woodwork, etc., are storage warehouses, express offices, printers' and lithographers' offices, publishing offices, plumber shops, factories in general, heavy-hardware stores, tinware stores, paint shops, grocery stores, meat markets, and stores for the sale of cheap or heavy furniture, firearms, safes, stoves and ranges, agricultural implements, etc.

Damage of the most serious nature may be done to buildings by businesses which require excessive use of acids and other corrosive chemicals, not only by the disfiguring and destroying of walls, woodwork, etc., but by serious injuries to, and possibly the entire destruction of, lead pipes and plumbing throughout the buildings. So, serious injuries may accrue to buildings by their use and occupancy by dealers in pigments of various kinds, which will discolor and disfigure the premises to such extents as to render heavy expenditures eventually necessary.

Restaurants, hotels, stores for the dealing in fish, oysters, etc., will often cause considerable trouble by the constant stoppage of drain pipes and sewer connections.

Trades and businesses which necessarily use large quantities of water, such as those of florists, laundries, etc., will often cause serious damage to buildings through the rotting of floors and beams and injuries to ceilings which are situated beneath them; and the same is true of businesses which consume large quantities of ice; as, for instance, meat markets, ice-cream manufactories, and cold-storage warehouses.

Dealers in fruits, vegetables, perishable goods generally, fish, oysters, etc., are generally objectionable as tenants of first-class real estate, because of the disagreeable odors which often result from the businesses, and which are often

difficult to destroy after the particular tenants shall have surrendered the premises.

Restaurants, bakeries, confectioneries, etc., may be the means of overrunning buildings in which they shall be situated with roaches, water bugs, and other vermin, which will necessarily be injurious to the buildings and which will often be difficult of extermination. So such businesses will often be objectionable because of the heat from ovens and cooking apparatus which they require.

It seems also to be a fact that, among certain tenants, there is prevalent a superstition which may prevent their occupancy of premises which have formerly been used for such businesses as that of an undertaker, a manufacturer of coffins, or a cemetery office.

It is evident that a correct and perfect list of trades and businesses, with their relative desirabilities for the purposes of the occupancy of leased premises, cannot be given, for the reason that there are great differences in the methods of conducting similar branches of business in different localities and by different individuals. The statements which have been made concerning different kinds of occupations ought therefore to be regarded rather as suggestions for the assistance of landlords in studying special cases than as complete rules for their government in all cases.

The consideration of the subject of landlord and tenant, and with it the long discussion of the subject of investments in real estate, may now be brought to a conclusion by the addition of some remarks upon the proper and most convenient methods of keeping account-books of rents and disbursements upon real estate, which may be conveniently termed "rent account-books."

A separate account of the rents which shall be collected, and of the disbursements which shall be made, should be kept for each building, house, apartment, store, or office which is ordinarily intended to be occupied by a single tenant. Thus, for example, in a building which contains twenty-five separate offices, a separate account should be kept for each office, or at least for each portion of the

building which shall be leased to a single tenant. Such an arrangement will be most advantageous for the purpose of keeping the details of each investment clearly in view, and also for the purpose of enabling owners to charge all disbursements for repairs, etc., against the exact premises to which they belong.

The separate rent accounts of parts of a building may, each year, or quarter, be carried into a summary for the entire building, and such charges as taxes, general repairs to the building, allowance for sinking fund, and such disbursements as cannot be apportioned among the separate parts, may be charged in the summary against the entire building. The general benefits of such an account will be evident without further mention; and the special benefits will be the abilities of the owners, at all times, to know the exact conditions of their investments, to observe, almost at a glance, the relative renting qualities of their properties, and to determine from these the methods of managing their present and future real estate investments.

The following pages will illustrate plainly the suggested method of keeping the rent account-book. The pages are intended to represent pages of a rent account-book of an office building, the cost of which is presumed to have been seventy-five thousand dollars for the land, and the same amount for the building, the total cost of the investment being one hundred and fifty thousand dollars.

The various figures have been taken merely for the purpose of convenience, and must not be considered as guides for the proper amounts of rentals and expenditures in such cases.

Landlord and Tenant

341

Office Building,
No. 2000-2002 Narrow St., New York City.
Store No. 2000, James Jones, Tenant.

Dr.

Cr.

1890.				1890.			
Jan. 10,	To painting and			Jan. 3,	By Jan. rent	\$	300
" 30,	decorating	\$	55	Feb. 4,	" Feb. "		300
Feb. 25,	To commission..		9	Mar. 5,	" Mar. "		300
Mar. 30,	" " ..		9	Ap'l 2,	" April "		300
Ap'l 30,	" " ..		9	May 9,	" May "		300
May 2,	" carpenter's		9	June 8,	" June "		300
" 30,	work.....		5	July 7,	" July "		300
June 30,	To commission..		9	Aug. 5,	" Aug. "		300
July 30,	" " ..		9	Sep. 9,	" Sep. "		300
Aug. 30,	" " ..		9	Oct. 3,	" Oct. "		300
Sep. 30,	" " ..		9	Nov. 2,	" Nov. "		300
Oct. 30,	" " ..		9	Dec. 4,	" Dec. "		300
Nov. 30,	" " ..		9				
Dec. 30,	" " ..		9				
	By balance.....	\$	432				
			\$3 600				\$3 600

Office Building,
No. 2000-2002 Narrow St., New York City.
Store No. 2002, Wm. Black, Tenant.
Jno. White & Co., " "

Dr.

Cr.

1890.				1890.			
Jan. 10,	To painting and			Jan. 3,	By Jan. rent	\$	350
" 30,	decorating	\$	55	Feb. 5,	" Feb. "		350
Feb. 25,	To commission..		10 50	Mar. 8,	" Mar. "		350
Mar. 15,	" plumbing....		15	Ap'l 30,	" April "		350
" 30,	" commission..		10 50	July 1,	" July "		350
Ap'l 30,	" " ..		10 50		(White & Co.)		
May 30,	" expense of			Aug. 2,	By Aug. rent....		350
	dispossessing			Sep. 3,	" Sep. "		350
	Wm. Black....		10	Oct. 3,	" Oct. "		350
July 30,	To commission..		10 50	Nov. 2,	" Nov. "		350
Aug. 30,	" " ..		10 50	Dec. 3,	" Dec. "		350
Sep. 30,	" " ..		10 50				
Oct. 30,	" " ..		10 50				
Nov. 30,	" " ..		10 50				
Dec. 30,	" " ..		10 50				
	By balance.....	\$	315				
			\$3 500				\$3 500

Office Building,
No. 2000-2002 Narrow St., New York City.
Office No. 1, Clark & Co., Tenants.

Dr.				Cr.			
1890.				1890.			
Jan. 10,	To papering....	\$	30	Jan. 2,	By Jan. rent ...	\$	50
" 30,	" commission.		1 50	Feb. 4,	" Feb. " ...		50
Feb. 25,	" " "		1 50	Mar. 2,	" Mar. " ...		50
Mar. 10,	" gas fixtures .		3	Ap'l 2,	" April " ...		50
" 30,	" commission.		1 50	May 3,	" May " ...		50
Ap'l 30,	" " "		1 50	June 2,	" June " ...		50
May 30,	" " "		1 50	July 3,	" July " ...		50
June 30,	" " "		1 50	Aug. 1,	" Aug. " ...		50
July 30,	" " "		1 50	Sep. 2,	" Sept. " ...		50
Aug. 30,	" " "		1 50	Oct. 3,	" Oct. " ...		50
Sep. 30,	" " "		1 50	Nov. 3,	" Nov. " ...		50
Oct. 30,	" " "		1 50	Dec. 2,	" Dec. " ...		50
Nov. 30,	" " "		1 50				
Dec. 30,	" " "		1 50				
	By balance.....		549				
			\$600				\$600

For the sake of convenience, we may assume that the supposed office building shall contain fifteen offices, and that the annual balance in the case of each office, determined as has been shown in the preceding pages, shall be five hundred and forty-nine dollars.

The annual summary for the entire building, and consequently the yearly indication of the condition of the investment, may now be made out as is illustrated on the following page. If such shall be desired, quarterly instead of yearly summaries may be made in a similar manner, but since the year is the only division of time for which the kinds of expenses will be similar and complete (thus taxes, water rates, etc., are paid annually) the annual summary will be found to be the more satisfactory.

Landlord and Tenant

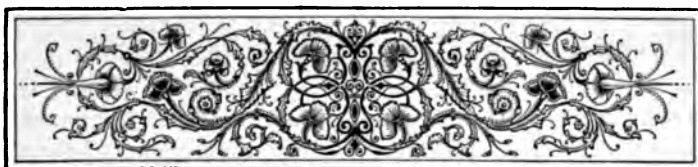
343

Office Building,
No. 2000-2002 Narrow St., New York City.
Summary for 1890.

Dr.				Cr.			
1890.				1890.			
Jan. 30,	To janitor's wages, \$	50		Dec. 31,	By store, \$2,000, bal..	\$ 3	432
" "	" gas bill.....	5		" "	" " 2,002 " ..	3	315
Feb. 28,	" janitor's wages,	50		" "	" office, 1, " ..		549
" "	" gas bill.....	5		" "	" " 2, " ..		549
Mar. 4,	" miscellaneous			" "	" " 3, " ..		549
	expenses.....	25		" "	" " 4, " ..		549
" 30,	To janitor's wages,	50		" "	" " 5, " ..		549
" "	" gas bill.....	5		" "	" " 6, " ..		549
Ap'l 30,	" janitor's wages,	50		" "	" " 7, " ..		549
" "	" gas bill.....	5		" "	" " 8, " ..		549
May 10,	" miscellaneous ..	25		" "	" " 9, " ..		549
" 30,	" janitor's wages,	50		" "	" " 10, " ..		549
" "	" gas bill.....	5		" "	" " 11, " ..		549
June 30,	" janitor's wages,	50		" "	" " 12, " ..		549
" "	" gas bill.....	5		" "	" " 13, " ..		549
July 5,	" carpenter work,	15		" "	" " 14, " ..		549
" 30,	" janitor's wages,	50		" "	" " 15, " ..		549
" "	" gas bill.....	5					
Aug. 20,	" water tax.....	250					
" 30,	" janitor's wages,	50					
" "	" gas bill.....	5					
Sep. 1,	" painting roof..	50					
" 5,	" coal.....	350					
" 10,	" mason work...	25					
" 30,	" janitor's wages,	50					
" "	" gas bill.....	5					
Oct. 5,	" miscellaneous..	15					
" 30,	" janitor's wages,	50					
" "	" gas bill.....	5					
Nov. 30,	" janitor's wages,	50					
" "	" gas bill.....	5					
" "	" taxes.....	1850					
Dec. 30,	" janitor's wages,	50					
" "	" gas bill.....	5					
" 31,	" sinking fund ..	1000					
" "	" 6 % interest on						
" "	\$150,000.....	9000					
" "	By balance.....	1717					
\$14 982				\$14 982			

The result of the summary, in the case of the supposed office building, will be a discovery of the fact that, after the payment of all expenses and six per cent. upon the amount of the investment, and proper allowance for the sinking fund, the building has earned a balance or surplus of over seventeen hundred dollars. If the satisfactory percentage of interest upon the investment had been determined upon as five, the balance or surplus would have been over thirty-two hundred dollars. The balance may also be determined by omitting from the debit side of the summary the item "six per cent. on \$150,000, \$9,000," in which case the balance will be \$10,717, or $7\frac{14}{100}$ per cent., net, upon the amount of the investment.





CHAPTER XI

DESCENT AND DISTRIBUTION OF PROPERTY. WILLS

THERE are few events belonging to the future which generally cause greater anxiety and more arduous consideration among persons of means than the disposition of their property after their deaths. Lawyers of considerable experience in this branch of the law will be able to bear testimony to the eagerness and anxiety which are so often manifested by well-to-do clients with regard to the making of their wills and the satisfactory distribution of their property after their deaths. More especially is this condition noticeable among persons of advanced age and enfeebled health who are possessed of large means. And surely it will not be entirely idle to remark that high-minded and sympathetic lawyers will faithfully strive at once to set at rest these troubled thoughts, and to make use of every fair precaution that the rightful wishes of their clients, with regard to the management of their properties after their deaths, shall not fail of substantial fulfilment. Perhaps in this, more than in any other way, will the conscientious lawyer be able best to contribute to the incalculable usefulness and beneficence of his grand profession ; for he cannot fail to know that a deep solicitude, on the part of a just and good man, with regard to the future employment of his property, is born of a union of all the best elements of humanity. Not in selfishness or in pride does the good man struggle long and diligently with this weighty problem, but rather in fidelity to his earthly trusts, in kindness, in justice, in self-forgetfulness, and in protecting love. And when all

the possibilities of right and wrong provisions, with regard to the disposition of one's property after death, shall be taken into consideration—including, as they must, the comfort and security or the suffering and insecurity of loved ones, and the improvement, education, and refinement, or the decline and retrograding of families—little wonder is to be excited by the studious care which the good and wise bestow upon such important and far-reaching matters. Nor can the necessity of the most careful and minute provisions for the disposal of property after death be too strenuously urged upon all persons who shall be possessed of considerable fortunes.

It is because of the great importance of the subject that the laws of all civilized lands prescribe, with such great care and exactness, the methods by which the property of persons who shall die without making wills shall be divided among their surviving relatives. These laws, which are called the laws of intestate succession, and for the distribution of the estates of intestates, differ considerably in the different States of our country, with regard to the exact provisions which are applicable to the various cases which may arise; and, except for the making of the statement that the real and personal property of intestates will generally be equally divided among their children (children of deceased children receiving the portions which their parents would have taken if they had been living), subject to the widows' dowers and other rights, and subject to certain provisions for surviving husbands, no attempt to explain their provisions need be made here.

It may be remarked, however, that all intelligent persons of property may profitably, by examinations of the statutes of the States in which they live, or by the aid of lawyers, make themselves generally familiar with the laws of their own States governing the descent of real property and the distribution of the personal property of intestates. And it may also be remarked that, if persons of property shall not fail to take the precaution of having their wills made, there will be little actual need of studying the laws which are

designed for those who shall meet their deaths without having made wills.

Before taking up the considerations which are deemed to be necessary in connection with the subject of the present chapter, it will be well to explain the meanings of certain terms, without the use of which the proper discussion of the subject appears to be difficult.

A person who dies without leaving a valid will is called an *intestate*. The real property of an intestate *descends* directly to the *heirs*, and the personal property of an intestate goes to the *administrator* or *administratrix* who is appointed by the court for the purpose of collecting the property and of distributing it, according to the provisions of the statutes, to the *next-of-kin*.

Strictly speaking a *will* is a disposition of *real property*, to take effect after death, and a *testament* is a similar disposition of *personal property*, the term "last will and testament" covering the disposition of all kinds of property to take effect after death. The popular meaning of the term "last will" is the legal instrument by which the property of a deceased person is given to others, according to the wishes of the deceased, as expressed in the will, the term being thus used to express both the strict will and testament. A *codicil* is a clause which is added to a will, after the execution of the will, for the purpose of changing some of the provisions contained in the will.

A person who has made a will is called a *testator* or (feminine) *testatrix*.

A gift of real property by will is called a *devise*, a testator who makes a gift of real property, is a *devisor*, and a person to whom such a gift is made is a *devisee*.

A *bequest*, or a *legacy*, is a gift of personal property by will, the latter term being commonly used to denote a gift of money or of specific chattels; a person to whom a bequest or a legacy is given is called a *legatee*.

A person who is designated in, and appointed by, a will to administer the estate or to execute the will, of a testator is called an *executor* or *executrix*.

A *trustee* under a will, or a *testamentary trustee*, is a person who is appointed by will to hold some estate or interest in property for the benefit of another.

A *testamentary guardian*, or a guardian by will, is a person who is appointed by will to be the guardian of the person or estate of an infant.

The laws of intestate succession, being general in their operation, those of any particular State making in all respects similar provisions for similar conditions of heirs, next-of-kin, and estates, and possessing minuteness of detail to a greater or less degree only in order that no such condition shall be left without ample statutory provision, it may fairly be presumed that the purpose of the laws is not the providing of perfect standards for the descent and distribution of the property of intelligent and provident persons of means, but the furnishing of a convenient means for the disposition of the property of such persons as may come to their deaths without having made use of the better and more comprehensive method of the last will and testament. Indeed, it may be said, more tersely, that these laws exist only for the benefit of the descendants of those who shall neglect the making of wills until it is too late. And, further, it may be said that the very existence of these laws of intestate succession furnishes, to a certain extent, an affirmative answer to the question as to whether owners of property ought to leave behind them, at their deaths, last wills and testaments.

The assertion that, in very many cases, the methods of descent and distribution of property which are prescribed by the laws will entirely fail to satisfy the requirements of property owners — that there are innumerable provisions which may be desired, and which can be secured only by means of properly drawn wills — must be generally admitted.

But, lest such reasons for the propriety and advantage of making wills shall be considered to be insufficient to overcome the common theory that no better disposition of a decedent's property can be made than that which is provided by the laws in cases of intestacy, other reasons may be given which seem to leave no room for doubt in the premises.

A reason for the making of wills, the great importance of which must go without saying, is that, only by means of wills can satisfactory and trusted persons be selected by the owners of property for the management of their estates after their deaths. The fact that the laws generally provide an order in which the relatives of an intestate shall be entitled to the administration of the estate, will in no measure detract from the force of the reason; for such are the possibilities of events which will change the prescribed order that its expected operation will often be set at naught.

Another important reason for the advantage of the making of wills is the fact that the legal requirements with relation to the bonds which must be furnished by administrators may prove to be the source of great trouble and inconvenience to the relatives of deceased persons who have made no wills.

A satisfactory reason why married women who shall be possessed of real estate, and to whom children have been born, should not fail to have their wills made, is that, under the laws relating to estates by courtesy, the husbands of intestate wives who have given birth to living children will be entitled to life estates in all the real property of which their wives may die possessed. While there are many cases in which such dispositions of real estate may not be at all objectionable, there are also many cases in which the results of such dispositions will be far from satisfactory; and, in the latter, which probably make up the majority of cases, the only adequate remedy will be the making of properly drawn last wills.

Apparently the only argument against the advisability and advantage of wills which may be advanced, and which appears to be at all deserving of notice, is the possibility of legal contentions concerning the validity of wills, which contentions may result in the entire invalidation of wills, and also in the serious depletion of estates, through the heavy expenses which are common to such litigations. There are, however, precautions which appear, for the most part, to be entirely adequate for the prevention of the suggested difficulties, and which will be sufficiently explained in the proper

places in this chapter. The necessity for such a contravention of evils as the argument, in many cases, will imply, may, therefore, be considered to be overcome; and the result will be the establishment of the general rule, seldom, indeed, safely to be departed from, that all persons who shall be possessed of any considerable amounts of property should be provided with carefully drawn last wills.

A consideration of the entire subject of wills which will prove to be sufficient for the purposes of this volume may be conveniently attained by the investigation of three conditions which may be regarded as essential to the successful operations of wills. These three conditions are : first, that the provisions which are contained in wills shall be, in all respects, sufficient for the purposes of the testators ; second, that wills shall be legally valid ; and third, that the provisions of wills shall be fully and faithfully carried into effect.

For the fulfilment of the first condition, a careful selection of lawyers for the drawing of wills, and consultations with the lawyers which shall be sufficient to enable them to understand fully the wishes and purposes of their clients, should furnish the general rule of conduct.

The preparation of a complete list of proposed bequests, devises, and provisions, containing the names and other descriptions of all beneficiaries, executors, trustees, and guardians, and memoranda of all questions upon which particular advice may be desired, will greatly facilitate the business of making wills. Such a list should be clear and concise, and written in ordinary style, without attempts to use technical terms, leaving for the lawyers the determination of necessary formal and legal terms. The following example of memoranda will serve to illustrate this suggestion :

Memoranda for Will of Mary Jane Doe, wife of John Doe, of Boston, Mass. :

1. To Mary Blake, my old servant, one thousand dollars, as soon as possible after my death.
2. To my husband, John Doe, my residence, No. —, — St., Boston, Mass., with all furniture, books, pictures,

works of art, and household goods, for his life, afterward to my children then living, and to the heirs of any deceased children.

3. To my sister, Alice Roe, wife of Richard Roe, of New York City, ten thousand dollars.

4. To my son, Thomas, the income from twenty-five thousand dollars for life, afterward the twenty-five thousand dollars to go to his children, if any; otherwise to my surviving children, and the heirs of any who may be deceased.

5. To my husband, John Doe, one third of all the rest of my property, for life; afterward to be equally divided among my three children, Sarah D. Wright, wife of William Wright, of Boston, Mass., Edward H. Doe, and Charles T. Doe, and the children of my deceased daughter, Fannie Carlton, late wife of Peter Carlton, of Philadelphia, Pa., the children of Fannie taking the share which would have been their mother's.

6. All the rest of my property to my three children, Sarah D. Wright, Edward H. Doe, and Charles T. Doe, and to the children of my deceased daughter Fannie Carlton, equally, the grandchildren having the share which would have been their mother's.

7. If any of my three children, Sarah, Edward, and Charles shall die before my death, I wish the property which would have gone to them if living to be given to their children; and, if they shall have no children, to the survivors of my three children mentioned; and to the children of my deceased daughter, Fannie, the share which she would have had if living.

8. My husband, and my three children, Sarah, Edward, and Charles, or the survivors to be my executors and trustees.

The manner in which one's property shall find a disposition after the death of the present owner is peculiarly a personal and private affair, and the causes and purposes which result in the making of wills are therefore well-nigh innumerable. Incomprehensible as it may appear to naturally constituted persons, it nevertheless seems to be true that many

of the baser and more unworthy of human attributes are found to be responsible for the remarkable provisions which are sometimes contained in wills. Envy, revengefulness, anger, pride, spite, malice—passions which should find absolutely no place in the calm and sober reflections concerning the conditions of those who are, or should be, dear to us, after we shall be unable to care for and protect them longer—are not infrequently to be discovered between the lines of last wills and testaments.

It will not be necessary here even to make comment in disparagement of such ignoble motives further than to remark that, for the solemn purposes which are to endure long after they shall have passed away, the wise and good will banish from their thoughts every vestige of unworthy sentiment, and strive to perform these, the last of their earthly duties, even more faithfully and more conscientiously than may have been performed the ordinary duties of life.

Numerous as they may appear to be, it is believed that all of the proper motives and purposes for the making of wills may be included in three general objects, to wit: the protecting against want and suffering of those who have either natural or proper claims to such protection; the providing for the improvement of, or at least for the continuance of, the present status of families; and the doing of charity and good works.

The distinguishing of those who have natural claims to one's protection is in general a matter of no great difficulty. Natural affection will quickly and invariably suggest children and children's children, husbands and wives, parents, brothers, and sisters; and if, by reason of improper conduct, any of these shall seem to have forfeited their natural claims, the painful question must finally be answered only by long and conscientious reflection, entirely free from improper prejudice and uncharitableness.

These elements of the problem having been satisfactorily determined, owners of property may next consider some of the common mistakes of judgment which they will assuredly be anxious to avoid in the making of wills.

A mistake which is sometimes made in the disposition of property by will, and which may result in disappointment and hardship to surviving husbands and wives, is the failure properly to realize the effects of the dividing of estates among the various members of families. It may be that, in this manner, a husband will deprive his widow of the means of maintaining the old home which has long since become immeasurably dear to her ; or that a wife, by neglecting to calculate the necessary expenses of maintaining her residence during her life, may bring disappointment and humiliation upon him who, during her long life, was in all respects a faithful and a loving husband.

On the other hand, the practice of leaving all one's property to the surviving husband or wife for life, afterward to go to the children, is regarded by many as being unjust to the children, because it may keep too long from them their birthrights, and also because it may, in certain cases, reflect upon their abilities to manage their affairs independently.

In cases where there shall be ample means for the proper support of all members of the families, the most satisfactory general course seems to be the giving to surviving husbands or wives of property which shall be sufficient to insure the continuances of their accustomed styles of living during the remainders of their lives, the property afterward to be divided among the children, and the dividing of the remaining property equally among the children.

In cases where estates shall not be so ample, the better part certainly appears to be, first of all, the protection of husbands and wives during their lives, leaving to the younger and stronger ones the necessity, if need be, of battling for their livings. And the theory upon which such a conclusion is based is evidently the duty and propriety of protecting first those who are least able to protect themselves. This theory should find an equal application to all those who shall have natural claims to protection, and who may, from sickness, or from other legitimate causes, be placed in the category of helpless ones. And, with the same theory in view, the end may be best attained by such dispositions of property

by will as shall give to those who are least competent, kinds of property, or property placed in investments, which will be the least difficult to manage and to retain. Thus, a son who is a capable and reliable business man may receive bequests of money in cash ; an artless daughter who is without experience in the management of property, the income from an investment which is, by the employment of methods which have been explained, assured for many years to come ; and a spendthrift, or improvident child, may be provided only with a stated and limited income for life.

With regard to persons who, although not included in the list of those who by reason of family ties are in a certain sense entitled to the property of their deceased relatives, seem to have established certain claims, by devoted acts of friendship, by faithful and long-continued services, by circumstances and conditions which excite compassion, or by characters of exceptional and sterling merit, little need be said. Where the means shall not be wanting, the sure promptings of affection and regard, of gratitude, of generosity, coupled in either case with the exercise of sound discretion, should prove in every case to be sufficient.

The providing for the future improvement of, or at least for the continuance of, the status of families, may justly be considered a desirable and most commendable object. For the status of a family must signify the conditions of all its members, with regard to the true accomplishments and useful attainments, which, it is true, may not be, but which ought to be, the direct results of independent means.

Even as ignorance, narrow-mindedness, and vice are the most natural concomitants of poverty, so the most natural concomitants of wealth must be presumed to be education, broad-minded usefulness, and morality.

Upon the motives and characters of coming generations, most of us will be able to exercise but little influence, by the processes of example and of precept ; but those of us who are possessed of fortunes may at least help to provide for the coming generations the means without which beneficial improvement will be well-nigh impossible.

In just what particular manners we shall arrange the dispositions of our fortunes, so that the desired ends may best be attained, is a question, weighted with difficulties which the cumulative wisdom of centuries has not been able entirely to remove.

The effect of the division of the parents' property among several children upon the future status of the family, unless counteracted by other influences, must inevitably tend in the wrong direction—that is, to lower the status of the family. And in this fact lies the pith of the difficulty, which may be clearly brought out by an assumed case, involving only ordinary elements :—

If the competence of parents, equal to half a million of dollars, at the death of the parents shall be divided equally among five children, the competence of each child, unaided from other sources, will be reduced to the amount of one hundred thousand dollars ; or, since each child must be presumed ultimately to be the parent of a distinct branch of the family, the status of the entire family will be reduced to one fifth of its original condition. Such a result is to be avoided altogether only by the augmenting of fortunes in equal ratios with the increasing of family numbers, either by the profits and accumulations from industry or from investment, or by the wise and judicious guidance of children, in the selection of husbands and wives, who shall possess corresponding fortunes. The supposition that the magnitudes of individual fortunes may be sufficient to overcome the difficulty evidently need not be entertained.

From the theory that the status of the family may best be maintained by a concentration of the family property continually upon one branch of the family, and by forever preventing the alienation of the property, have grown the English laws of primogeniture and entail; by which the wealth of the father is intended to pass down the generations always to a single heir — if possible, to the eldest son. And, from a contrary theory — that the unfairness of maintaining the wealth of one branch of the family, at the expense of the others, is opposed to the spirit of American institutions —

have grown the American laws in actual prohibition of the English methods.

These laws, called the laws *against perpetuity*, exist generally throughout the United States, and are to the effect that the power of alienation of property shall not be suspended for a longer period of time than during any number (or a certain number) of lives in being. In some States this period is limited to two lives in being, and twenty-one years and a fraction thereafter; and the practical result of the laws against perpetuities in such cases is that the alienation of property may be prevented for the longest possible period of time by giving it to a child for life, afterward to a grandchild for life, and afterward to a great grandchild absolutely.

Perhaps, with the view of keeping intact large and valuable estates, there is no impropriety in leaving the greater part of an estate to the son or daughter who, by reason of substantial character and ability, shall be most competent to preserve the estate, provided other deserving children shall not be left without proper protection. Indeed, there appears to be a tendency among certain families of great wealth to adopt such a plan. It has also been suggested that, by providing for the longest lawful suspension of the power of alienation, and by solemn requests and understandings that the proceeding shall be continued from generation to generation, the nearest possible approach to the system of entail may be attained.

Whether, in our country and in our times, such an arrangement will prove to be beneficial or even practicable, and whether, indeed, the limited possibilities of the laws against perpetuities should be employed to the greatest extent, are open questions which will depend largely upon the circumstances of individual cases. If sons and daughters shall be evidently incompetent for the successful management of property, the power of independent disposal may well be placed beyond their reach. And if, on the other hand, they shall have profited by judicious example and instruction, and shall be, in all respects, able to take care of their inheritances, the reverse proposition—that they should receive

their inheritances unconditionally and absolutely—may perhaps fairly be presumed to follow. Under the existing conditions of our institutions, and of society, it will be evident that questions of such a nature must be left for the determinations of individuals according to their own desires, and according to the circumstances of special cases.

It must be remarked, however, that in all cases where it shall be considered advisable to subject real property to one or more life estates, the character of the property with reference to its ability to furnish sufficient incomes should be carefully considered. Otherwise, since life tenants will be obliged to pay taxes and other charges, the real property may prove to be serious burdens to the life tenants whom it shall be intended to benefit.

It is to be apprehended that all properly minded persons whom Providence shall have blessed with ample competences will, during their lifetimes, devote certain portions of their incomes to the benefit and relief of their fellow-beings who shall not have been similarly blessed; that is, to the doing of charity and of good works. And no less is it to be apprehended that upright and generous possessors of fortunes will often desire to make provisions for the continuance of their useful and generous acts after they shall have been called away from life in this world.

Inasmuch as there is at no time a lack of opportunities for the doing of most beneficial charities, and since, for the purposes of discrimination between the numerous and different objects of charity, only those persons whose tastes and opportunities shall permit careful study and investigation of the subject will be in all respects competent, it has been deemed consistent with the best proprieties to make, in this volume, only such suggestions as may be of general utility in the premises; and, with this purpose in view, it must be remarked, first of all, that sympathies and desires to assist the many who are in need of assistance ought not to be allowed to call our thoughts away from the natural family duties which lie always nearer to us. If fortunes shall be sufficient for the doing of real charities, without injury to the natural

rights of children or of others, there can be no better purpose to which portions of them may be devoted than the relieving of affliction and of distress. But if fortunes shall not be sufficient for the purposes which are in question, without injustice to near and dear ones, or if there shall be serious doubts concerning the matter, it seems to be the better plan that rightful inheritances shall take their most natural courses, with full assurances that dutiful and loving children will not neglect the objects which, to their knowledge, have become dear to the parents whose memories they will fondly cherish.

Property may be given by will to charitable objects in three general manners. First, it may be given directly to the desired objects ; second, it may be given to executors or to other persons, with more or less specific directions as to how it shall be distributed ; and third, it may be given to executors or to others with directions that it shall be devoted to charitable purposes, but at the discretions and according to the wishes of the persons who shall be so designated. With regard to these methods, it may be said, in favor of the first, that it is the simplest, and perhaps the least likely to miscarry ; in favor of the third, that (presuming the persons who shall be selected for the trusts to be in all respects suitable) it permits of the employment of good judgment and discretion, with regard to individual acts of charity, long after the deaths of the testators, thus avoiding, to a certain extent, the giving of aid to objects which may be at one time deserving and at another time the reverse ; and in favor of the second, that it is a mean between the other two. Evidently an objection to the first method will be that the particular objects of charity may, after having received their bequests, become, by fraud or mismanagement, unworthy ; and a common objection to the other methods will be the difficulties in the way of selecting persons who may be thoroughly relied upon for the faithful and judicious performance of their trusts.

A careful study of the various institutions and objects of charity, and of the characters of relatives and friends, with sufficient references to the suggestions for the selection of

executors, trustees and guardians, which will be found in the later pages of this chapter, must be relied upon in every case for a satisfactory choice between the methods which have been mentioned.

The importance of taking all possible precautions for the validity of wills need scarcely be mentioned, since it is evident that a will which is not valid is, in fact, no will at all; and that a person who shall have no will which is valid will be an intestate.

The first requisite for the validity of wills is that the testamentary capacities of testators shall be sufficient; or, in other words, that the ages and conditions of testators with respect to sanity, and freedom from duress, fraud, and undue influence shall be such that the law considers them as competent to dispose of their properties by will.

The age at which persons may make valid wills of personal property is not the same in all the States; some States requiring that testators shall be of full age, while others fix the legal age at eighteen (and in some cases even fewer) years; but the common rule with regard to wills of real property is that testators must be of full age.

The general rule with regard to mental capacity is that testators must have, at the times of making their wills, understandings of their business affairs, and recollections of the properties of which they wish to dispose, of the persons to whom they wish to leave their properties, and of the manners in which their properties are to be distributed. These requirements, as well as the requirements with regard to freedom from duress, fraud, and undue influence, are to be best provided for by the selection of, and the free consultation with, lawyers who shall not only be competent for the ordinary purposes of drawing wills, but whose experience, judgment, and carefulness may be relied upon as sufficient for unusual cases.

There are also other statutory provisions, differing in the different States, with regard to the execution, witnessing, and attestation of wills, disinheriting of children, provisions for husbands and wives, the rights of married women, taxes

on certain kinds of bequests and devises to corporations, etc.—all of which must necessarily be looked after by the lawyers, and which need not receive particular mention here.

The following suggestions, concerning precautions, which are not included in the legal and technical matters relating to wills, and which, if properly followed, will go far towards establishing the validity of wills, will prove to be of benefit to owners of property :

Unusual, strange, or unnatural provisions in wills will often excite suspicions concerning the mental capacities of testators, and may also suggest fraud or undue influence to the courts and juries upon which determinations of the validity of wills may finally depend. Testators may, therefore, wisely abstain from making such provisions whenever possible ; and, if they cannot well be avoided, explanations and reasons may be included in wills for the purpose of preventing the injurious suspicions and suggestions which have been mentioned. With the same purpose in view, the reasons for all unusual provisions in wills may be thoroughly explained verbally to the lawyers who shall draw the wills, to the subscribing witnesses who must prove them, and to the persons who shall be named as executors.

It may also be said that testators, instead of delaying the making of their wills until they shall be confined to their beds, perhaps with their last illnesses, should take care that their wills shall be made while they are in good actual and apparent health. Deathbed wills often appear to be suggestive of undue influence or of mental incapacities, from the mere fact that the making of the wills shall have been so carelessly delayed.

Preferably, the subscribing witnesses of wills should be trusted friends of intelligence and position, who shall have no interests in the wills further than that the wishes of the testators shall be carried out, and whose long or intimate acquaintances with the testators will afford them excellent opportunities for judging correctly the testamentary capacities of the testators, and the conditions under which the wills are made. So, if the lawyers who draw wills shall be

well acquainted with the general conditions and personal characters of their clients, they may prove to be of the greatest value in establishing the validity of wills.

The lawyers who draw last wills frequently act also as subscribing witnesses; and to this arrangement there is perhaps no objection, provided the characters of the lawyers and their acquaintance with the testators shall be satisfactory; nor is there any apparent advantage in the arrangement, unless it be that the education and training of lawyers tend to make them especially suitable for such purposes.

With the view of aiding the establishment of their freedom from restraint and undue influences, persons wishing to have their wills made may go alone to the offices of their lawyers, and may have no third parties present at their interviews until it shall be necessary to furnish witnesses for the attestation of the wills.

The judicious selection of executors will also tend materially to aid the establishment of the validity of wills; for, upon their fidelity, courage and good judgment, may depend the unopposed probating of wills, and the successful and otherwise satisfactory termination of litigations concerning the validity of wills.

Perhaps there is no one proceeding in connection with the disposal of property, which is so peculiarly exposed to litigation, as the proving of wills; and it is doubtful if any other kind of litigation will be able to result so disastrously to the properties which are involved. Indeed, the circumstances which are peculiar to the proving of wills which seek to dispose of considerable properties seem to invite attacks upon the wills by all persons who may think themselves to have been unfairly treated by the provisions of the wills, and by all unscrupulous persons who may perceive opportunities to share in the distributions of the estates. Those who have been able to accumulate and to protect the properties for the disposal of which the wills are sought to be proved, are no longer to be feared; their once watchful and discerning eyes have been forever closed in the slumber of death; helpless and inexperienced hands may have the management of the

estates; unworthy lawyers may be quick to suggest the easy overthrowing of the wills; executors may be incompetent and indifferent; courts of justice, although sternly enjoined by the spirit of the law to enforce the lawful purposes of wills, appear, in many cases, to be none too jealous of these rights of the dead, and likewise often far too lavish in their allowances out of the estates; and all the allurements of rich properties, apparently without owners and without defenders, seem to beckon from far and near the cowardly and the unscrupulous, whose assaults are directed only against the helpless and against the dead.

So great are the necessary, and perhaps the unnecessary, but none the less usual, expenses of protracted litigations over the proving of wills, that cases in which entire estates have practically been dissipated, leaving but little for the finally successful litigants, are by no means uncommon.

In view of these facts, not only the precautions which have been suggested for the final triumphs of wills, and the establishment of validity in spite of all opposition, must be taken, but every reasonable and available precaution must be made use of for the entire prevention of contest or litigation over the probating of wills. And with this object constantly before them, wise persons, when having their wills made, will hesitate long before making extreme provisions which will be almost certain to create disappointment and contention.

Dissolute children, quarrelsome brothers and sisters, and worthless and unfaithful husbands and wives, may often be justly entitled to no consideration in the making of wills, and in the dispositions of property; yet often, by some unimportant and ingenious provisions for them, they may be placated, and disastrous litigation may be thus prevented.

A common, and often successful, method of obtaining this end is the giving of legacies, which are calculated to be exactly sufficient to the purpose, to those who are likely to contest the proving of wills; with provisions to the effect that the bequests shall be void and the amounts otherwise disposed of if the persons in question shall in any manner oppose or contest the probating of the wills.

Another method of accomplishing the same purpose, is the disposition of property among the desired parties before the deaths of the present owners—certainly a dangerous method, and one which should not be employed without very careful provisions for the prevention of evil results to the donors, through the selfishness and ingratitude of those who shall receive the properties.

But there is another aspect to the threatened danger of the dissipation of estates by reason of extensive litigation over the proving of wills—the question of right and wrong, of duty. There are many cases in which the manifest duties of conscientious persons, with relation to the provisions of their wills, will be such that they are not to be shirked or avoided under any reasonable circumstances. Such persons may also conclude that, if their wills shall not be capable of being maintained with all the provisions which their consciences shall demand, the wills may as well be declared invalid ; or that, if they must depart from the dictates of conscience and of judgment in order that their wills may be valid, it will be as well that they shall die without leaving wills. In such cases, and for such persons, there seems to be but one satisfactory course of action. Their wills must be made in exact accordance with their consciences and their wishes, making use of all proper precautions for the validity of the wills; and, having done this, they must be content to leave the final results in the hands of an all-wise Providence.

The final condition concerning last wills which remains to be considered, is that the provisions which are contained in wills shall be fully and faithfully carried into effect; and this condition, evidently, is to be fulfilled only by the proper selection of the persons who are to act under the wills as executors, trustees, and guardians. The authority of these agents in the management and disposition of property, and their opportunities, either faithfully and exactly to follow out, or, to a great extent, to defeat, the wishes of their departed friends, may not safely be disregarded; for, although the law undertakes to hold them firmly to their solemn duties, its vigilance is, indeed, not always equal to the task.

The law reposes in executors, trustees, and guardians, somewhat of the confidence which, it is to be presumed, was intended by the decedents by whom they have been selected and appointed to their peculiar duties. They usually serve without other security than their own characters and responsibilities, subject to judicial examinations, which are, in the majority of cases, somewhat perfunctory and superficial; they keep their own accounts of receipts and disbursements; and in many ways are often allowed to exercise discretions with which none are able to interfere. The surpassing importance of the proper selection of executors, trustees, and guardians cannot, therefore, be doubted, and the various means by which this object may be best accomplished may well receive the closest consideration.

Since the general purposes for which the three testamentary officers which have been mentioned are appointed is the same—to wit, the carrying into effect of the wishes of the deceased persons—the principles upon which their selection should depend may be considered together, after first having pointed out the special points of difference and the special precautions which, accordingly, will be necessary.

The duties of a simple executor include, briefly, the collection of the assets belonging to the estate, the payment of the lawful debts of the decedent, the payment of the bequests which are provided for in the will, and the final accounting before the proper judicial officers. These duties cease with the final accounting and discharge of an executor, and may extend over only short periods of time. But trustees and guardians have larger duties to perform—duties which may extend through periods of many years, or even during entire lifetimes. Greater care ought, therefore, be given to the choice of these latter officers, in proportion as their duties and responsibilities shall be of greater importance and of longer durations.

Perhaps, among human affairs, there can be no more solemn and responsible office for which it is necessary to provide than that of guardian for little ones who have been left parentless and defenceless by the dispensations of

Providence. Not only the faithful and judicious management of the properties of children, but their comfort, happiness, training, and education depend almost entirely upon those to whom the sacred duties of parents have been delegated by the dead.

The ordinary executor or trustee, whose strict honesty and correct business methods shall result in the performance of duties with machine-like regularity and precision, and without sympathy or sentiment, may be in all respects an ideal officer. But not so the guardians of children. Such, in addition to the qualities of honesty, fidelity, and ability, must possess warm and loving hearts, against which their little wards may safely nestle ; they must have sympathies and sentiments instantly to be aroused by the rightful appeals of childhood ; they must be intense lovers of children, yet with justice and self-restraint sufficient to prevent the improper indulgence of their wards—in short, they must possess in abundance those rare characteristics which will enable them to be, at all times, wise and loving parents for the children of others.

Evidently, in the greater number of cases, the proper and most natural guardian of children will be the surviving parent where such exists ; and if there shall be no living parent, the order of desirability, other things being equal, appears to be : grandparents, elder brothers and sisters, uncles and aunts of the blood, etc. ; the nearest relative who shall possess the necessary qualities.

If it shall be necessary to look outside of the list of relatives for the guardians of children, a useful rule appears to be that the required characteristics are most likely to be found among middle-aged persons of means who have been deprived of their own children.

The relative social and financial positions of families may well be considered whenever such considerations will not exclude more essential ones ; the positions of guardians being neither too lofty, lest their wards be reared to extravagance and uselessness ; nor too lowly, lest the training of their wards be neglected, and lest the temptations to profit

unlawfully from the estates of their wards shall finally overcome their powers of resistance.

Except under very unusual circumstances, it appears that guardians should not be chosen from among persons who have, or who shall be likely to have, considerable families of their own.

Experience seems surely to indicate that there is little room in the permanent affections of those who have living children for the children of others, even though they be fatherless and motherless ; and there can be no sadder spectacle than that of an unhappy child who plainly realizes that its little life has already become a burden to others.

The law, recognizing the fact that the qualities which are required for the management of property and for the training of children may be widely different, often allows the appointment of two guardians for the same child—the one a guardian of the estate, and the other a guardian of the person. In some cases, such an arrangement will prove to be the more satisfactory ; but the better general rule seems to be to approximate, as closely as possible, to the relation of actual parent and child, by uniting in the same person all the duties and responsibilities of guardian.

The laws of the different States, in relation to the appointment of testamentary guardians, are not in all respects uniform ; a common rule, however, is that the appointment belongs to the father, and to the mother if the father shall not be living. In all cases where the appointment of testamentary guardians shall be desired, the effect of special statutes must be determined by the lawyers who are to draw the wills.

With regard, now, to the selection of executors (and, as far as is not inconsistent with the special suggestions which have been made, the discussion will apply to the selection of guardians and trustees), the following principles and methods may be mentioned and considered.

First, regarding the matter strictly and only as a business arrangement, executors may be selected from among persons

who, or institutions which, will furnish adequate security for the proper performance of the required duties ; second, regarding executorship as a solemn and sacred duty, springing from the relations of kinship, or of intimate and confidential friendship, executors may be chosen from the lists of sterling friends and relatives, whose integrity, fidelity, and ability may safely be trusted, even to this superlative extent. Unfortunately, there is not always an opportunity to choose between these two principles and methods. When the fact that services, which are to be performed in strictly business arrangements, must be paid for at rates which shall be satisfactory to those who are to perform the services shall be taken into consideration, it will be evident that only estates of considerable magnitudes will be able to furnish the compensations which will usually be necessary for the employment of the first method. And from this statement it follows, as a general proposition, that only persons who shall be possessed of considerable amounts of property will be able to enjoy the full advantages of choosing between the methods which have been mentioned. Persons who have not been blessed with considerable properties, must necessarily be confined, in their choices of executors, to those among their relatives and friends who shall be willing to render the required services, without regard to compensation, for friendship's sake.

In special cases, however, where the numbers of devisees or legatees, or the numbers of the principal beneficiaries under last wills, shall not be large, the principles of the first-mentioned method may be applied effectively, and without regard to the magnitudes of estates, by appointing as executors all those who shall have direct interests in, or those having the principal interests in, the wills. Thus, suppose that a certain will shall provide principally for a husband and two children, or for two brothers and two sisters ; if the husband and the two children, or the two brothers and the two sisters, shall all be made joint executors, they will have equal opportunities and advantages in the performance of the duties relating to the estate, and all the interests of the estate will, it

may be presumed, be carefully attended to, seeing that they have become the personal interests of all the executors.

It will not be denied that there are many persons whose financial conditions and characters are such as to furnish satisfactory assurances that any duties which they may assume will be faithfully performed. If such persons, who shall be willing to act in the capacities of executors, cannot be found, and if the first-mentioned method of selecting executors shall have been decided upon, the persons who shall be selected may be required to furnish securities in the form of bonds for the faithful performance of their duties; or well-known and high-standing trust companies may be appointed to the duties of executors.

Concerning the second method of selecting executors, it may be said that, if the characters of the persons who shall be chosen shall reach the high standard which must be required, the duties of their offices will, indeed, be performed in ideal manners; for, where abilities are adequate, the highest type of the performance of duties must be that which is actuated by the affections of conscientious persons.

But persons who shall possess the many attributes which are essential to the making of entirely satisfactory executors are by no means easily to be found; and the propounding of rules which will materially lessen the difficulty seems to be a practical impossibility. It may, however, be suggested that persons who shall possess the necessary qualities, may be sought, first of all, among those who have the natural interests of kinship, both in the decedents and in the beneficiaries under their wills. Thus, worthy husbands may surely be counted upon to deal honestly with the properties of their deceased wives for the benefit of their own children; good and affectionate fathers and mothers ought surely to be relied upon to account honestly for the means which their dead sons and daughters have left for the maintenance of their children; elder sons and daughters, who have been dutiful children, ought surely to be depended upon for the honest fulfilment of their dead parents' wishes and for the honest guarding of the rights of their younger brothers and

sisters ; and good and true brothers and sisters ought surely not to come short of their honest duties to the estates of deceased brothers and sisters.

A common practice, especially in cases of complicated and difficult characters, is the appointing of lawyers, who are considered to be entirely trustworthy as executors. With regard to the practice, it must be said that lawyers of ability may be presumed to be competent for the work of executors, and that otherwise no distinction can be properly made in their favor. Indeed, if it shall become necessary to decide definitely, in favor of or against this practice, the safer plan in the majority of cases appears to be to avoid the practice, unless there shall be exceptional conditions in favor of particular lawyers.

For purposes of comparison between the two general methods of selecting executors which have been considered, the advantages of, and the objections to, both methods may be briefly stated.

The principal advantage of the first method evidently will be the security which it should afford, and the principal objections to the method will be a lack of special interest on the parts of the executors (which will lead to perfunctory performances of duties, in many cases by means of clerks and assistants) and the limit of application of the method which has already been mentioned. As has been suggested, the great advantage of the second method will be the earnest and devoted performance of duties which it should secure, and the corresponding objection must be the difficulties in the selecting of persons who shall possess the required qualities.

The appointing, as executors, of all persons who shall have considerable interest in wills, or of all the principal beneficiaries under wills, seems, without doubt, to be the best method which can be suggested for the special cases in which its employment will be practicable.

After sufficiently weighing the advantages and disadvantages of the two general methods which have been considered, probably the safest conclusion will be that the rule

which will be applicable to the greatest number of cases will be a mean between the two general methods. This will evidently be that executors should be selected from among relatives and friends who shall possess the required qualities of business ability, honesty, and fidelity, and, at the same time, whose financial standings and conditions shall be such as to afford sufficient securities.

With regard to the most advantageous number of executors to be appointed for the purposes of a single last will and testament, it should evidently be in proportion to the duties which are to be performed. But, since executors may employ reasonable numbers of necessary assistants for clerical work, there are perhaps few cases in which the duties may not be performed by a single competent executor. In favor of a single executor it may also be said that the duties of the office may be more systematically performed than where they are distributed indiscriminately among several. On the other hand, much may be said in favor of the selection of several executors for a single will. The possibility of complications which may result from the death of a sole executor will be practically removed ; and where there shall be several executors, each, in a measure, will or should act as a check upon the others. The expenses of administering estates should not be materially affected by the number of the executors, since ordinarily the commissions are the same whether there shall be one executor or several.

The better general rule appears to be that several executors shall be chosen, with directions that, in case of the death of either or any of them, the duties shall devolve upon the survivor or survivors. In cases where single executors shall be desired, others may be appointed to act only in case of the deaths of the first-named executors.

The destruction of a will, as by burning or tearing, with intent on the part of the testator to destroy it, of course acts as a revocation. So a will is ordinarily revoked by the making and execution of a subsequent one ; and the destruction of a subsequent will does not always act to revive a former one. According to the various laws of the different States,

a will may be also revoked, in some cases, by the marriage of the testator or testatrix, and in others, by the marriage of the testator or testatrix and the birth of a child.

The consideration of the subject of last wills and testaments may now be concluded by the making of the following suggestions.

In view of the constantly changing conditions of families and of properties, by reason of such events as deaths, marriages, and births, and the various circumstances of investments, testators may keep their lawyers generally informed as to such events and circumstances, in order that any necessary changes in wills may be suggested by the lawyers. In cases where new wills shall be drawn, testators should take pains to destroy all former wills, by the sure method of burning, for the purpose of preventing the confusion and litigation which often follow the discovery of several wills, which have been made by the same testator. In order to facilitate the discovery of wills, and the proper delivery of them into the hands of executors, testators should keep those whom they have selected as their executors informed as to the general whereabouts of their wills, and as to the means of obtaining possession of them without difficulty.





CHAPTER XII

GUARDIANS, EXECUTORS, AND ADMINISTRATORS

A CONSIDERABLE portion of the preceding chapter has been devoted to the consideration of the offices of guardians and executors, from the standpoints of testators. The duties and responsibilities of these offices remain to be considered from the standpoints of those who have been or who may be called upon to occupy such positions.

In view of the remarks which are contained in the preceding chapter, concerning the particular traits of character which are deemed to be essential to the proper performance of the duties of guardians, it is to be apprehended that conscientious persons will not accept such important trusts until, with full understandings of the difficulties and responsibilities which will certainly be involved, they shall have thoroughly satisfied themselves that they are, in all possible respects, fit and competent for the performance of the important duties which will justly be expected of them. Their abilities for the management of their own finances will afford satisfactory answers to questions as to whether they shall be competent to manage the finances of others. Honest, careful, and long-continued examinations of their own personal characters will be able satisfactorily to answer all other questions concerning abilities for the fulfilment of the remaining duties which will be required.

To conscientious lovers of children, who shall have also moderate business abilities, the duties of guardians will not prove to be extraordinarily difficult. While such duties should not be assumed without careful and adequate

considerations of all the possibilities which may be involved in particular cases ; neither should they be shirked by those who shall be competent. The avoiding of the duties of guardians by those who ought to assume them may be the means of placing them in the hands of far less capable and conscientious persons.

The conscientious and complete performance of a guardian's duties will not fail to meet with ample rewards, in the delightful contemplations of a satisfied conscience, in the lasting consolation of a sacred, and perhaps an arduous trust, which has been faithfully performed, and in the grateful assurance of the honest approbation of all good people. No less certain will be the dreadful remorse, and the bitter and universal condemnation, which will be the portion of that person who seems to be the most execrable of human beings, the unfaithful guardian.

After having complied with the preliminary requirements of the law, the first duties of the guardian of the person and estate of an infant will be to receive the person and the estate of the infant from the hands of the executors or others who may have the temporary custody, and to make a careful and complete inventory and account of the property of the ward.

The regular and continuing duties of guardians will be the management of the estates of their wards (of which complete accounts must always be kept, charging the estates with all necessary and lawful expenditures and crediting them with all incomes, increases, and profits), and the maintenance, training, and education of the wards.

For the proper management of the estates of wards, the precautions principles which have been expounded in this work, when supplemented by the suggestions which will follow in this place, should be entirely sufficient. Perhaps, in the majority of cases, it may be said that the duties of guardians, with respect to the estates of their wards, will have been satisfactorily performed if, at the terminations of their offices, their wards shall have been properly provided for and educated without any depreciation of the values of their estates; or, in other words, if the estates shall have

been so managed that the incomes will have been sufficient for the proper support and education of the wards.

But, evidently, this proposition must be qualified in accordance to the magnitudes of the estates of wards. If the estate of a ward shall be so small that it cannot possibly furnish an income which will be sufficient for the support and education of the ward, the principal of the estate must, under the permission of the courts, necessarily be used; and the ward must be prepared, as wisely and as speedily as is possible, for the necessity of self-support.

If, on the contrary, the estate of a ward shall be much larger than is necessary for the furnishing of a sufficient income, the duties of the guardian, with respect to the management of the estate, will be fulfilled only by the securing of a proper and corresponding increase in the principal of the estate.

The office of guardian is a strictly fiduciary one, and guardians are entitled to no profits or benefits, except the compensations which are allowed by, and specified by, the laws, from the estates of their wards. Therefore all profits and increases must be credited to the estates of the wards, and must also be strictly accounted for by the guardians.

The maintenance, training, and education of wards must be in accordance with their prospective social and financial positions. Thus, wards of ample wealth and belonging to families of high social standing will be entitled to the proper luxuries of maintenance and of education; while those who will be compelled to earn their livings by their own efforts must be trained in frugality and industry, and educated in the directions which will be necessary for their self-support. But, in all cases, it cannot be doubted that wards should be thoroughly inculcated with the knowledge and appreciation of the true value of property, and of the rightful purposes and employments for which it is chiefly to be prized.

The duties of guardians concerning the moral and religious training of their wards need not be discussed here; for such considerations will manifestly extend beyond the domain of this volume, and into the fields of ethics and of individual

conscience. Nevertheless, no elaboration of ethics, and no sectarianism of conscience, will be able to gainsay the statement that the duties of guardians will be by no means fulfilled unless every reasonable endeavor shall be employed for the thorough instruction of their wards in the imperishable principles of truth, integrity, humanity, and virtue.

Guardians who are appointed by the courts are usually required to render annual, or other periodical accounts of the conditions of the estates which have been placed in their hands; and all guardians who shall have charge of the properties of wards will be required to render final accounts of the conditions of the estates before they can be legally discharged from their duties. The necessity that guardians shall keep complete accounts of all receipts and disbursements which are connected with the estates of their wards, and that they shall obtain and preserve receipts or vouchers for all expenditures, will therefore be at once evident.

Many persons, who are entirely unacquainted with the duties of executors and administrators find themselves placed in positions of quandary and embarrassment by the death of relatives or friends, who have selected them for the duties of executors, under the provisions of last wills and testaments, or by the dying intestate of relatives for whose estates they must act as administrators. For the benefit and instruction of such persons, the principal regular duties of executors and administrators will be explained, with such suggestions as may appear to be necessary for their assistance in the premises.

Before entering upon the discussion of the duties of executors and administrators, however, it will be well to call attention to the fact that executors and administrators have charge of the personal property only of decedents, the title to real property passing directly to the heirs or devisees, unless, by special provisions in their wills, decedents shall direct otherwise.

The practical distinctions between executors and administrators may also be explained at this point, after which the

consideration of the duties of both will be included under those of executors.

The chief point of difference between executors and administrators is that the former act by virtue of appointments to certain duties which are contained in last wills and testaments, and the latter act by virtue of appointments to similar duties, in cases of intestacy, by courts having charge of probate matters. The order in which the relatives of intestates are entitled to appointment as administrators is generally prescribed by the laws of the States in which intestates shall have lived or died. Generally speaking, surviving husbands or wives of decedents are preferred, and after them the order of the next-of-kin is substantially followed, provided the order shall not be disturbed by renunciation, or disqualification on account of insanity or other legal incapacity.

The first duty of an executor, or of a person who shall be entitled to act as an administrator, will be to attend to the burial of the decedent; and this should be done in a manner which is in keeping with the estate of the decedent, or in accordance with instructions which may be contained in the will. Next in order of the duties of an executor, will be the proving of the decedent's will, and the obtaining of letters testamentary; and the corresponding duty of a person who shall be entitled to the administration of the estate of an intestate will be to obtain from the proper court letters of administration.

These duties will always involve technical, legal proceedings; the services of competent lawyers, for the purpose of obtaining letters testamentary and letters of administration, cannot, therefore, be properly dispensed with. The practical statement of the duty which is in question will therefore be that an executor named in a will, or a person who is entitled to the administration of an intestate's estate, should, at the first opportunity, give the necessary information and instructions to a reputable and competent lawyer.

Letters testamentary and letters of administration are issued out of the courts having jurisdiction over probate matters, and constitute the legal authority by which executors

and administrators respectively are entitled to the possession of the estates of decedents. Until these letters shall have been regularly obtained, therefore, an executor who is named in a will, or a person who is entitled to the administration of an estate, will have no strict right to the custody of, or interference with, the estates or affairs of the deceased. In case there shall be danger of theft or loss of property belonging to the estate of a decedent, however, the executor named in the will, or the person who is entitled to the administration, may safely assume the responsibility of taking possession of such property for purposes of preservation.

A wise precaution, in all such cases, will be the providing of responsible witnesses as to all properties which shall be taken possession of in this manner.

With the obtaining of letters testamentary, or of letters of administration, the distinctions in the general duties of executors and administrators will practically cease, with the exception that the former must distribute the estates for which they are executors according to the directions which are contained in the last wills and testaments, and the latter must perform these duties according to the laws for the distribution of the property of intestates. The consideration of the duties of executors which follows, will apply, therefore, equally to those of administrators.

Perhaps the most important duty of executors, as well as the one which will, in many cases, afford the greatest difficulties, will be the collection of the assets belonging to the estates of the decedents. For this purpose, the following suggestions will prove to be valuable :

All articles of personal property which may be lost or stolen (such as money, bonds, stocks, clothing, jewelry, books, pictures, etc.) should be secured and placed in safe keeping ; for executors will be personally liable for any losses to the estates of which they shall have charge which shall be due to their carelessness or improper conduct.

All bank-books, account-books, letters, memorandum books, and documents of every description belonging to the estates, should be at once taken possession of by the executors;

and these, at the earliest opportunities, should be subjected to careful examinations for the purposes of discovering and of locating any property which may otherwise escape the notice of the executors.

Memoranda should be made of all clues or possible clues to the existence and whereabouts of property ; inquiries should also be made of all parties who shall be likely to have useful information to impart concerning the properties of the decedents ; and in all proper ways assiduous efforts should be made for the discovery of property which belongs, or ought to belong, to the decedents' estates.

All personal property must be taken into the actual custody of the executors at the earliest possible opportunities, and if possession cannot be acquired by ordinary and peaceable means, it will be the duty of executors to take the necessary legal proceedings without hesitation or delay. Not only the law requires executors to exercise all reasonable diligence in the collection of assets, and holds them to strict account ; but conscience and moral duty require that every article of value — every cent — which of right belongs to the estates which they are administering, shall be obtained for the benefit of those who are to share in the distributions. The principle upon which the duties which are now under consideration depends is, evidently, that the largest possible and lawful amounts of property are to be collected. The sound judgments of executors must, however, be exercised to prevent the useless wasting of assets in vain attempts to recover property which shall be of little or no value, or the recovery of which shall be extremely improbable.

Executors are generally required by law to make and file inventories of all assets which have come into their hands or of which they shall have knowledge. Such inventories must contain descriptions and valuations of all articles of personal property, of debts which may be due to the estates of the decedents, and of all other assets which can be discovered. The laws of the different States provide for the manners and times in which inventories of this kind shall be made and filed, and also for the selection of appraisers for the purposes

of the valuations. Such matters, as also all other matters which shall depend upon the special statutes of the States in which executors shall act, must be determined by consultations with the lawyers having charge of the legal affairs of the executors.

The powers of executors are in general very broad; the fundamental principle being that, subject only to special provisions, which shall be contained in the wills, they stand in the places of the decedents whom they represent. Executors may, therefore, sue and be sued in their representative capacities; they may, in good faith, compromise claims and subject disputed matters to arbitration; they may sell and even mortgage the assets belonging to the estates; they may indorse notes which are payable to the orders of the decedents, and bind the estates of the decedents by completing the unfinished contracts of the decedents, and by the employment of the necessary attorneys and agents. But, in the exercise of these extensive powers, executors may well proceed with prudence and with caution, seeking reasonable aid whenever such shall be necessary; since, in addition to the fact that such a manner of proceeding will be included among their moral duties toward the estates of which they have the management, they will be made personally liable for the results of all acts which may savor of fraud, collusion, or gross carelessness.

Executors are bound to ascertain all legal debts or liabilities of the decedents, and to pay and discharge them when the amounts of assets shall be sufficient. And for these purposes the laws commonly provide methods of advertising for claims against the estates, and specify the times of payments of claims, and the orders of priority in the payment of certain kinds of debts. These are evidently matters to be determined by the lawyers, and are also matters which must not be disregarded, lest, by improper payments, executors may be compelled to sustain the losses themselves.

All assets belonging to the estates of decedents having been collected, and the debts of the decedents having been regularly discharged, according to the requirements of the

laws, executors must pay the bequests and legacies which are provided for by the wills, and must otherwise carry out the directions which are contained in the wills; taking care, however, that no payments of legacies shall be made until the times which may be provided by the laws for such payments, that legacies shall be paid to the persons who are entitled to receive them, and that, in all cases, receipts for the payments, stating the amounts (or specific articles) which have been paid, and the purposes for which they have been paid, shall be required.

Sometimes wills may contain complicated or ambiguous provisions and directions which will result in difficulties and embarrassment for the executors. In all such cases, executors must seek competent legal advice, and, if necessary, the aid of the courts for the definite construction of embarrassing provisions and for instructions concerning the duties of the executors must be invoked. With assistance of such a character, the administering of estates will generally prove not to be beyond the abilities of ordinary persons.

With regard to the general rule for the proper administration by executors of the estates of decedents, it may be said that the law requires them to act with perfect good faith, and with such skill, prudence, and diligence as men ordinarily bestow upon their own affairs.

The final duty of executors is the rendering of complete accounts of all transactions which they shall have had concerning the estates which they have administered. The final accounting and the discharge of executors from their duties and liabilities which follows, usually by orders of the probate courts, terminate the direct relations of executors with the estates of the decedents.

The final accounting and the discharge of guardians take place when their wards shall have reached the ages at which they shall be entitled by law to the custody of their own properties, and when the duties of the guardians shall have been completed.



CHAPTER XIII

MARRIED WOMEN

THE legal disabilities of married women were formerly almost complete. They were regarded as incapable of managing their own affairs, and their very personalities were regarded as being merged in the personalities of their husbands. The property of a woman became, upon her marriage, the property of her husband ; whatever sums she might earn during marriage, belonged to her husband ; she could no longer make legal contracts ; and her husband was liable for her torts. But in the United States gradually these disabilities have been done away with, until married women now find themselves almost without special disabilities.

The theory of the merged personalities—that husband and wife are one person, represented entirely by the husband — has so far disappeared in the United States that married women may now commonly make legal contracts, not only with others, but even with their husbands.

The laws of the different States concerning the rights, powers, and disabilities of married women are far from uniform. When it shall be necessary for married women to ascertain their exact status in the law, they must have recourse to the statutes of the particular States in which they reside, or in which their real property is located.

The following statements, however, will be of service in cases where more precise knowledge of the laws may not be necessary.

A wife has no right of dower in Arizona, California,

Idaho, Iowa, Mississippi, Nebraska, Nevada, Washington, and Wyoming; and a husband has no right of curtesy in California, Idaho, Iowa, Mississippi, Nebraska, Nevada, Ohio, Washington, and Wyoming

The property of a married woman, of legal age, acquired before or after marriage, is her separate property, free from the debts and control of her husband, in Arizona (except property acquired after marriage otherwise than by gift, devise, bequest, or descent, which is common property), Arkansas, California (with exception as in Arizona), Colorado (except property received after marriage otherwise than by descent, devise, or bequest, or by gift from any person except her husband, and except for certain restrictions concerning wills), Connecticut (if married after April 20, 1877, except for the husband's rights as survivor), District of Columbia (except property acquired during marriage by gift or conveyance from her husband), Iowa, Maine (except real estate conveyed to her by her husband not as security for, or in payment of, a *bona fide* debt), Michigan, Mississippi (except for certain provisions concerning wills), Nebraska (except property acquired by gift from her husband), Nevada (except property acquired after marriage otherwise than by gift, bequest, devise, or descent, with its profits), New York, Ohio (except that she cannot exclude her husband from her dwelling), South Carolina, Utah, Washington (except property acquired after marriage otherwise than by gift, devise, or inheritance, which is community property, managed by her husband), Wisconsin (except property acquired after marriage from her husband), and Wyoming (except as in Wisconsin). The same is true in Massachusetts, and Virginia, except that in these States a husband's right of curtesy cannot be impaired without his consent. In Texas the property of a married woman before marriage, or acquired after marriage by gift, devise, or descent, and the increase of land acquired, is her separate property, but under the sole management of her husband; and such is practically the law in Idaho. In Kentucky a husband has the use of his wife's property with power to rent the real property for not more than three years.

Special provisions are made for common or community property between husbands and wives in Arizona, California, Idaho, Louisiana, Montana, Nevada, New Mexico, Texas, and Washington.

A married woman is not authorized to convey her real property without the consent of her husband in Alabama (unless the husband is *non compos*, has abandoned her, is a non-resident, or is imprisoned for a term of not less than two years), Connecticut (except by leave of court, if abandoned by her husband for three years ; or if a conservator is over her husband ; or if married since April 20, 1877), Delaware, Florida, Idaho, Indiana (except by leave of court), Kentucky (unless by leave of court if her husband has deserted her, fails to provide suitably for her, or is in the penitentiary for more than one year), Louisiana, Maryland (unless her husband is insane), Massachusetts, Minnesota (unless by decree of court, if deserted for a year, or if entitled to a divorce), Missouri (unless by leave of court if deserted by or not supported by her husband), Montana, New Jersey, New Mexico, North Carolina, Pennsylvania, Rhode Island, Vermont, and West Virginia (unless apart from her husband).

A married woman of legal age may dispose of her separate property by will in Arkansas, California, Delaware, District of Columbia, Florida, Idaho, Iowa, Maine, Maryland, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey (without impairing her husband's interest in her real property), New York, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. In Colorado she may dispose of one half of her property only away from her husband without his written consent ; in Massachusetts, Missouri, North Carolina, Oregon, Rhode Island, and Virginia she cannot, by will, impair her husband's curtesy without his consent ; and in Montana she cannot, without her husband's written consent, deprive him of more than one third of her real estate, or of her personal estate.

A married woman of legal age may make contracts in Alabama (with her husband's written consent), Arkansas (with

reference to her property, but contracts of service for more than a month must be approved by her husband), Colorado, Connecticut (if married since April 20, 1877), Delaware, District of Columbia (relating to her separate property), Florida (by license of court), Georgia (with her husband's consent), Illinois (but she cannot become a co-partner without her husband's consent, unless he has deserted her, is insane, or is in the penitentiary), Indiana (about her personal property, but not about her real property without her husband's consent. She may not make contracts of suretyship), Iowa, Kansas, Kentucky (if her husband resides without the State, or is insane, or has abandoned her), Louisiana (by leave of court), Maine (by leave of court, if her husband has abandoned her, or is in prison leaving her no maintenance), Massachusetts (except with her husband), Michigan (about her property), Minnesota (but, not to sell or convey real estate, except by purchase money mortgage or lease for not more than three years without the consent of her husband, and not with her husband touching real estate), Mississippi (about her property), Missouri, Montana, Nebraska (concerning her property), New Hampshire (except for certain restrictions concerning undertakings on her husband's behalf), New Mexico (with her husband's consent), New York (except with her husband, but she may convey real estate directly to him), North Carolina (by ante-nuptial contract or by her husband's written consent), Ohio, Oregon, Pennsylvania (except that she may not mortgage or sell her real property without her husband's consent), Rhode Island (except as to real property, furniture, plate, jewels, shares of stock, savings deposits, and mortgage debts due her), South Carolina (with reference to her property), Vermont (except with her husband), Virginia (in regard to her trade or separate estate), Washington, and Wyoming. In Texas she may contract debts for family necessities or for the benefit of her separate property. She may not become accommodation indorser, guarantor, or surety in New Jersey and Pennsylvania ; may not act as executrix or administratrix, if unmarried when appointed, in Nebraska ; and may not be surety for her

husband except by way of mortgage in Vermont, or in any way in West Virginia.

A married woman may sue and be sued alone in Alabama (upon her contracts and for her torts), Arkansas, California (concerning her estate or homestead, when action is between herself and husband, or when living apart from her husband by reason of his desertion or a mutual agreement), Colorado (touching her person, property, or reputation), Connecticut (under certain conditions), Delaware (upon her contracts and touching her separate property), District of Columbia (relating to her separate property), Florida (by license of court), Georgia (with her husband's consent), Idaho (in certain cases), Illinois, Iowa (touching her rights and property), Kansas, Kentucky (if her husband resides without the State, has abandoned her, or is insane), Louisiana (by leave of court if her husband is interdicted or absent), Maine (touching her property and personal rights), Massachusetts (but no suit can be had between husband and wife), Michigan (touching her sole property), Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada (by leave of court), New Hampshire, New Jersey (touching her separate property and for her debts), New York (affecting her separate estate), Ohio, Oregon (regarding her property or personal rights), Pennsylvania (upon contracts and for torts), Rhode Island (upon authorized contracts, or by leave of court if deserted by or not provided for by her husband, if able, for six months), South Carolina (touching her separate property, or when the action is between her husband and herself), Utah, Vermont (in certain cases), Virginia, Washington, West Virginia (concerning her separate estate, when the action is between her husband and herself, or when living apart from him), Wisconsin (touching her property or personal earnings), and Wyoming (touching her property, person, and reputation).

A married woman may engage in trade and business on her own account in Alabama (with the written consent of her husband, and without it if he is *non compos*, has abandoned her, or is a non-resident), Arizona, Arkansas, California (on petition to the court and notice), Colorado, Connecticut,

Florida (by license of court), Georgia (with her husband's consent), Idaho (by judgment of court), Indiana, Kansas, Kentucky (by leave of court), Louisiana, Massachusetts (on filing a certificate giving names of husband and wife, the nature and place of business, etc.), Missouri, Montana (by order of court and public notice of application), Nebraska, Nevada (by leave of court), New York, North Carolina (by ante-nuptial contract, or by her husband's written consent), Pennsylvania, Virginia, West Virginia, Wisconsin (if deserted by or unprovided for by her husband), and Wyoming.

Marriage contracts or ante-nuptial settlements are allowed in Delaware, Georgia, Idaho, Kansas, Louisiana, Maine, Michigan, Nevada, New Hampshire, New York, and North Carolina.

A married woman must support her husband if there is no community property, and he has no separate property, and is unable to support himself, in California and Idaho. In Connecticut, Illinois, and Iowa, both are liable for family support. In Louisiana, if her property is decreed separate, she must contribute proportionately to household expenses and the education of children, and do both alone if her husband has nothing. In Arizona, California, Montana, and Nevada she is liable for the support of her children if doing business on her own account. In Nevada she must support her husband if he is unable to support himself. In Kentucky, Missouri, Nebraska, New Mexico, Tennessee, and Washington she may be liable for necessities to her family. In Ohio she must assist her husband as far as she is able, if he is unable to support the family. In Illinois her separate property is liable for the support of poor descendants and ancestors.

A married woman may insure her husband's life for the benefit of herself and children in Arizona (to \$300 premium), in Connecticut (to \$300 premium), Illinois, Maryland, Michigan (to \$300 premium), New York (for her sole use up to \$500 premium), North Carolina, Ohio, Rhode Island (she may insure any life up to \$10,000 for her own benefit), Tennessee, Vermont (to \$300 premium) West Virginia (to \$150

premium), and Wisconsin (she may insure her husband or another person for her benefit to \$150 premium).

The principal statutory provisions for husbands in the distribution of property of married women, upon their deaths without wills, may be briefly stated as follows: In Delaware a wife's property goes to her heirs subject to curtesy ; if without issue, the husband takes one half of the wife's real estate for life, after the payment of her debts. In Georgia if a wife dies without issue the husband takes the whole of her property; if intestate leaving children they and the husband share alike. In Idaho the husband takes the community property, unless set apart for the wife's support by judicial decree. In Illinois, if without issue, the husband takes one half of the real, and all of the personal property of the wife ; if leaving issue, he takes one third of her personal property ; and if leaving no issue or kindred he takes all of her property. In Indiana, if leaving no issue, but parents, the husband takes three fourths of the wife's property, and if the property does not exceed one thousand dollars he takes all ; if leaving no issue or parents, he takes all of her property; if a wife dies testate or intestate, the husband is entitled to one third of her real property subject to its proportion of her ante-nuptial debts. In Maryland, if with issue, the husband takes a life estate in all the wife's property; if without issue, he takes a life estate in her real property, and her personal property absolutely. In Massachusetts, if without issue, the husband takes the wife's real estate in fee to the value of five thousand dollars and curtesy in the remainder, and if without kindred he takes the whole in fee ; if a wife dies leaving issue and personal property undisposed of by will, the husband takes one half of the same. In Michigan, if leaving children, the husband takes one third of the wife's personal property ; if leaving only one child, the husband takes one half of her personal property ; and if leaving no children or their issue, nor parents, nor brothers or sisters or their issue, he takes the whole. In Minnesota, if with issue, the husband takes an undivided one third of the wife's real property ; if without

kindred, he takes all of her real estate. All undisposed of personal property is administered as real property. In Mississippi, if with issue, the husband and the wife's descendants take equal parts of her property ; if without issue, the husband takes the whole. In Montana, if leaving a child or its issue, the husband takes an equal share of the wife's property; if leaving more than one child, the husband takes one third of the wife's property; if without issue, he takes one half of her property; and if without issue or kindred, he takes the whole. In Nebraska, if leaving only one issue, or if instead of issue the wife leaves a father, mother, brother or sister, the husband takes one half of her property; if leaving more than one issue, the husband takes one third of her property ; and if leaving no issue or kindred, he takes the whole. In New Hampshire the husband is entitled to curtesy. If the wife dies with issue by him, he may waive provision in her will and release curtesy and take one third of her real estate in fee ; if without issue by him, he may take a life interest in one third of her real estate ; and if without issue, he may take one half of her real estate in fee. In New Mexico, if a wife dies testate or intestate, the husband takes one half of her property (after deducting the common debts of the marriage and her private debts) ; when her property amounts to five thousand dollars, and her heirs are not descendants, or in the absence of these it exceeds this sum (after certain deductions), the husband takes one fourth of her property, if without it he would remain poor ; upon the death of a wife without legitimate children the husband takes all of the community property. In New York the husband takes one third of the wife's personal property, and if she leaves no descendants, parent, brother, sister, nephew, or niece he takes the whole. In North Carolina the husband takes the wife's personal property subject to her debts. In Ohio, if without children or their legal representatives or kindred, the husband takes all of the wife's property. In Rhode Island, if without issue or kindred, the husband takes the wife's property. In South Carolina, if with issue, the husband takes one third of the wife's property ; if without

issue, he takes one half of her property ; if without issue, parents, brothers, sisters, or issue, or lineal ancestors, he takes two thirds of her property ; and if without issue or kindred he takes the whole. In Texas, if with issue, the husband takes one third of the wife's personal property, and a life estate in one third of her land ; if without issue, he takes all of her personal property and one half of her land absolutely ; and if without issue, parents, brothers or sisters or issue, he takes the whole. In Vermont, if without issue, the husband, if he does not elect to take curtesy, takes all of the wife's property, if not over two thousand dollars ; if the wife's property exceeds this sum the husband takes two thousand dollars and one half of the remainder ; if without issue or kindred, he takes all of her property. In Virginia the husband takes the personal property of the wife. In Washington, if leaving one child, the husband takes one half of the wife's property ; if more than one child, he takes one third of her property ; if she dies without issue but leaves parents, the husband takes one half of her property ; and if she leaves no issue or parents, brother or sister, he takes the whole. In West Virginia, if with issue, the husband takes one third of the wife's personal property ; if without issue, he takes the whole. In Wisconsin, if without issue, the husband takes all of the wife's property. In Wyoming, if with issue, the husband takes one half of the wife's property ; if without issue, he takes three fourths of her property, and if not more than ten thousand dollars, he takes the whole.

These statements appear to furnish all the information, with regard to the property rights of married women, which will be necessary in ordinary cases. The present chapter may, therefore, be brought to a conclusion by the offering of some suggestions which the experience of the author, as a lawyer, compels him to regard as of real value, and which, it is hoped, will not be considered by the readers of this work to be either presumptions or digressions.

It frequently happens that women of means are united by marriage to husbands who have little or no property of

their own. Without considering the proprieties of such unions, it may be said that, if husbands shall be possessed of proper manly spirits, such circumstances will be, to a certain extent, constant humiliations to them, and wives may very wisely do all reasonable things which may be in their abilities, to relieve their husbands of such disagreeable sensations. To this end wives may avoid all unnecessary public reference (even among their closest friends) to their own properties and means ; and, while they should carefully maintain the titles to their properties (or in other words their principals) in their own names, they may allow their husbands to receive their incomes, to keep the bank accounts, and to pay the household bills with their (the husbands') own checks. By so doing, wives will in no degree demean or humiliate themselves ; they will place no more confidence in their husbands than they are often obliged to place in their lawyers or their agents ; and they will place their husbands, before the world, in the positions which they are universally expected to occupy.

Whether or not wives should permit their husbands to take charge of their principals, and to manage their investments, will evidently depend upon the relative abilities of husbands and wives in particular cases.

In this connection may be given the case of a married woman who, upon the death of her father, received from his estate the sum of seventy-five thousand dollars, practically in cash. Her husband, a business man with little or no property of his own, at once retired from active business, and devoted himself to the management of her property. After having had charge of his wife's property for about sixteen years, the husband had so wisely and successfully managed the property that the net annual income from the property (the principal being safely and permanently invested, and no increases having been received from outside sources) for the year 1896 was, by actual computation, nine thousand four hundred and sixty dollars. In other words, while, in this case, the wife's household, including her husband, had been supported by the income from her property, the husband had, by a wise

and economical management of her affairs, more than doubled the amount of her property. Unfortunately, it may be said that this case is altogether exceptional ; but, at any rate it must be admitted that this particular husband was actually worth much more than the cost of his maintenance.

It is evident that wives should not go to the point, with reference to the management of their properties, which is suggested by the case which has been given, unless they shall have the best of proofs that the abilities of their husbands for the management of property surpass their own abilities in this respect. But with respect to the suggestions which have been made concerning the incomes of wives, it may be added that it will be worth the while for wives whose husbands shall not be plainly unfit for the confidence, to make practical use of the suggestions, at least until the unfitness of husbands shall have been demonstrated to the satisfaction of their wives ; in which cases, husbands may be removed from their positions of trust without serious difficulties.





CHAPTER XIV

MISCELLANEOUS REMARKS AND SUGGESTIONS

BEFORE bringing to a conclusion this work, which has already somewhat exceeded in magnitude the anticipations of the author, numerous topics of importance which have suggested themselves, and which, from lack of homogeneity, appear to be capable of proper treatment only in a chapter which shall be devoted to subjects of a miscellaneous character, ought to be at least briefly considered. The desire on the part of the author that this work shall include all useful information and suggestion within its proper scope, and which shall be within the scope of his abilities and industry, is deemed to be sufficient reason for the addition of the present chapter, in which will be given, under appropriate headings, and without regard to regular order, such information and suggestions as are considered to be necessary or valuable.

Annuities.—Under certain conditions of age, physical or other incapacity, and smallness of principal, it sometimes becomes necessary to discover some method of obtaining, even at eventual sacrifices, larger relative incomes than may be obtained by means of any of the regular methods of investment.

If we suppose the case of a woman seventy-five years of age whose entire principal has become reduced to the small sum of three thousand dollars, and who is entirely dependent upon it for support, it will be at once evident that, unless by some means the regular annual income from this small principal, during the few remaining years of her life, may be increased to much more than the ordinary

income of about five per cent., the woman will be compelled to consume regularly each year a portion of her principal. If a means of determining definitely, and without the possibility of mistake, the remaining years of the supposed woman's life could be discovered, there would be little difficulty in computing the annual allowance, out of the principal, which may be expended in her support, without resulting in the final entire loss of her means of support. But such a means of definitely determining, in advance, the events of the future cannot possibly be obtained ; and the woman of the supposed case (unless the method which will be explained shall be employed) will therefore be compelled, during the last painful years of her life, to live in bitter poverty and economy, looking forward with dread and apprehension lest her small means shall be entirely expended before her death.

For cases similar to the one which has been supposed, the method of life annuities furnishes at once an adequate remedy and a substantial relief, notwithstanding the fact that it will be open to serious theoretical objections, if it shall be considered in the light of a regular means of investment.

The principles of the method of life annuities may be explained in the following manner :

Life-insurance companies commonly make a practice of receiving certain sums of money from their patrons, with agreements to the effect that the companies shall pay (annually, semi-annually, or quarterly) to the annuitants, during their lives, specified sums of money, and that, at the deaths of the annuitants, the amounts which they have paid to the companies shall become the absolute property of the companies. The amounts of annuities are determined from the amounts which shall be paid to the companies, and from the numbers of years which (according to the established tables of longevity) the annuitants shall have yet to live. In consideration of the fact that the companies finally obtain absolutely the principals from which are derived the annuities, the companies are able to pay larger percentages upon the principals than may be obtained in any other practical manner.

LIFE ANNUITY RATES—MALES

TABLE I

Age last birth-day	PRICE OF \$100 ANNUITY			ANNUITY PURCHASED BY \$1000			Age last birth-day
	\$100 Annually	\$50 Semi-Annually	\$25 Quarterly	Annual payment	Semi-annual payment	Quarterly payment	
3	\$2,045 70	\$2,070 70	\$2,083 20	\$48 88	\$24 14	\$12 00	3
4	2,034 00	2,059 00	2,071 50	49 16	24 28	12 06	4
5	2,022 30	2,047 30	2,059 80	49 44	24 42	12 13	5
6	2,010 60	2,035 60	2,048 10	49 73	24 56	12 20	6
7	1,998 90	2,023 90	2,036 40	50 02	24 70	12 27	7
8	1,987 20	2,012 20	2,024 70	50 32	24 84	12 34	8
9	1,975 50	2,000 50	2,013 00	50 62	24 99	12 41	9
10	1,963 70	1,988 70	2,001 20	50 92	25 14	12 49	10
11	1,951 80	1,976 80	1,989 30	51 23	25 29	12 56	11
12	1,939 80	1,964 80	1,977 30	51 55	25 44	12 64	12
13	1,927 70	1,952 70	1,965 20	51 87	25 60	12 72	13
14	1,915 40	1,940 40	1,952 90	52 20	25 76	12 80	14
15	1,902 90	1,927 90	1,940 40	52 55	25 93	12 88	15
16	1,890 20	1,915 20	1,927 70	52 90	26 10	12 97	16
17	1,877 30	1,902 30	1,914 80	53 26	26 28	13 05	17
18	1,864 20	1,889 20	1,901 70	53 64	26 46	13 14	18
19	1,850 90	1,875 90	1,888 40	54 02	26 65	13 23	19
20	1,837 40	1,862 40	1,874 90	54 42	26 84	13 33	20
21	1,823 70	1,848 70	1,861 20	54 83	27 04	13 43	21
22	1,809 80	1,834 80	1,847 30	55 25	27 25	13 53	22
23	1,795 70	1,820 70	1,833 20	55 68	27 46	13 63	23
24	1,781 40	1,806 40	1,818 90	56 13	27 67	13 74	24
25	1,766 90	1,791 90	1,804 40	56 59	27 90	13 85	25
26	1,752 20	1,777 20	1,789 70	57 07	28 13	13 96	26
27	1,737 30	1,762 30	1,774 80	57 56	28 37	14 08	27
28	1,722 20	1,747 20	1,759 70	58 06	28 61	14 20	28
29	1,706 80	1,731 80	1,744 30	58 58	28 87	14 33	29
30	1,691 10	1,716 00	1,728 60	59 13	29 13	14 46	30
31	1,675 10	1,700 10	1,712 60	59 69	29 41	14 59	31
32	1,658 80	1,683 90	1,696 30	60 28	29 69	14 73	32
33	1,642 20	1,667 20	1,679 70	60 89	29 99	14 88	33
34	1,625 30	1,650 30	1,662 80	61 52	30 29	15 03	34
35	1,608 10	1,633 10	1,645 60	62 18	30 61	15 19	35
36	1,590 60	1,615 60	1,628 10	62 86	30 94	15 35	36
37	1,572 80	1,597 80	1,610 30	63 58	31 29	15 52	37
38	1,554 70	1,579 70	1,592 20	64 32	31 65	15 70	38
39	1,536 30	1,561 30	1,573 80	65 09	32 02	15 88	39
40	1,517 60	1,542 60	1,555 10	65 89	32 41	16 07	40
41	1,498 60	1,523 60	1,536 10	66 72	32 81	16 27	41
42	1,479 20	1,504 20	1,516 70	67 60	33 24	16 48	42
43	1,459 40	1,484 40	1,496 90	68 52	33 68	16 70	43

Miscellaneous Remarks and Suggestions 395

LIFE ANNUITY RATES—MALES

TABLE 2

Age last birth-day	PRICE OF \$100 ANNUITY			ANNUITY PURCHASED BY \$1000			Age last birth-day
	\$100 Annually	\$50 Semi-Annually	\$25 Quarterly	Annual payment	Semi-annual payment	Quarterly payment	
44	\$1,439 20	\$1,464 20	\$1,476 70	\$ 69 48	\$34 14	\$16 92	44
45	1,418 60	1,443 60	1,456 10	70 49	34 63	17 16	45
46	1,397 50	1,422 50	1,435 00	71 55	35 14	17 42	46
47	1,375 90	1,400 90	1,413 40	72 67	35 69	17 68	47
48	1,353 80	1,378 80	1,391 30	73 86	36 26	17 96	48
49	1,331 10	1,356 10	1,368 60	75 12	36 87	18 26	49
50	1,307 70	1,332 70	1,345 20	76 47	37 51	18 58	50
51	1,283 50	1,308 50	1,321 00	77 91	38 21	18 92	51
52	1,258 50	1,283 50	1,296 00	79 45	38 95	19 20	52
53	1,232 70	1,257 70	1,270 20	81 12	39 75	19 68	53
54	1,206 00	1,231 00	1,243 50	82 91	40 61	20 10	54
55	1,178 40	1,203 40	1,215 90	84 86	41 54	20 56	55
56	1,149 90	1,174 90	1,187 40	86 96	42 55	21 05	56
57	1,120 50	1,145 50	1,158 00	89 24	43 64	21 58	57
58	1,090 30	1,115 30	1,127 80	91 71	44 83	22 16	58
59	1,059 50	1,084 50	1,097 00	94 38	46 10	22 78	59
60	1,028 30	1,053 30	1,065 80	97 24	47 46	23 45	60
61	997 00	1,022 00	1,034 50	100 30	48 92	24 16	61
62	966 00	991 00	1,003 50	103 51	50 45	24 91	62
63	935 60	960 60	973 10	106 88	52 05	25 69	63
64	905 90	930 90	943 40	110 38	53 71	26 49	64
65	877 00	902 00	914 50	114 02	55 43	27 33	65
66	848 90	873 90	886 40	117 79	57 21	28 20	66
67	821 60	846 60	859 10	121 71	59 05	29 10	67
68	795 10	820 10	832 60	125 77	60 96	30 02	68
69	769 40	794 40	806 90	129 97	62 94	30 97	69
70	744 50	769 50	782 00	134 31	64 98	31 96	70
71	720 40	745 40	757 90	138 81	67 07	32 98	71
72	697 10	722 10	734 60	143 45	69 24	34 03	72
73	674 60	699 60	712 10	148 23	71 46	35 11	73
74	652 90	677 90	690 40	153 16	73 75	36 21	74
75	632 00	657 00	669 50	158 22	76 10	37 34	75
76	612 00	637 00	649 50	163 39	78 49	38 49	76
77	593 10	618 10	630 60	168 60	80 89	39 64	77
78	575 40	600 40	612 90	173 79	83 27	40 78	78
79	558 90	583 90	596 40	178 92	85 63	41 91	79
80	543 60	568 60	581 10	183 95	87 93	43 02	80

LIFE ANNUITY RATES—FEMALES

TABLE 3

Age last birth-day	PRICE OF \$100 ANNUITY			ANNUITY PURCHASED BY \$1000			Age last birth-day
	\$100 Annually	\$50 Semi-Annually	\$25 Quarterly	Annual payment	Semi-annual payment	Quarterly payment	
3	\$2,119 00	\$2,144 00	\$2,156 50	\$47 19	\$23 32	\$11 59	3
4	2,109 30	2,134 30	2,146 80	47 40	23 42	11 64	4
5	2,099 60	2,124 60	2,137 10	47 62	23 53	11 69	5
6	2,089 90	2,114 90	2,127 40	47 84	23 64	11 75	6
7	2,080 20	2,105 20	2,117 70	48 07	23 75	11 80	7
8	2,070 50	2,095 50	2,108 00	48 29	23 86	11 85	8
9	2,060 80	2,085 80	2,098 30	48 52	23 97	11 91	9
10	2,051 10	2,076 10	2,088 60	48 75	24 08	11 96	10
11	2,041 40	2,066 40	2,078 90	48 98	24 19	12 02	11
12	2,031 70	2,056 70	2,069 20	49 21	24 31	12 08	12
13	2,022 00	2,047 00	2,059 50	49 45	24 42	12 13	13
14	2,012 30	2,037 30	2,049 80	49 69	24 54	12 19	14
15	2,002 60	2,027 60	2,040 10	49 93	24 66	12 25	15
16	1,992 90	2,017 90	2,030 40	50 17	24 77	12 31	16
17	1,983 20	2,008 20	2,020 70	50 42	24 89	12 37	17
18	1,973 50	1,998 50	2,011 00	50 67	25 01	12 43	18
19	1,963 80	1,988 80	2,001 30	50 92	25 14	12 49	19
20	1,954 00	1,979 00	1,991 50	51 17	25 26	12 55	20
21	1,944 10	1,969 10	1,981 60	51 43	25 39	12 61	21
22	1,934 00	1,959 00	1,971 50	51 70	25 52	12 68	22
23	1,923 60	1,948 60	1,961 10	51 98	25 66	12 74	23
24	1,912 80	1,937 80	1,950 30	52 27	25 80	12 81	24
25	1,901 50	1,926 60	1,939 00	52 59	25 95	12 89	25
26	1,889 70	1,914 70	1,927 20	52 91	26 11	12 97	26
27	1,877 40	1,902 40	1,914 90	53 26	26 28	13 05	27
28	1,864 60	1,889 60	1,902 10	53 63	26 46	13 14	28
29	1,851 30	1,876 30	1,888 80	54 01	26 64	13 23	29
30	1,837 50	1,862 50	1,875 00	54 42	26 84	13 33	30
31	1,823 20	1,848 20	1,860 70	54 84	27 05	13 43	31
32	1,808 40	1,833 40	1,845 90	55 29	27 27	13 54	32
33	1,793 10	1,818 10	1,830 60	55 76	27 50	13 65	33
34	1,777 30	1,802 30	1,814 80	56 26	27 74	13 77	34
35	1,760 90	1,785 90	1,798 40	56 78	27 99	13 90	35
36	1,743 90	1,768 90	1,781 40	57 34	28 26	14 03	36
37	1,726 30	1,751 30	1,763 80	57 92	28 55	14 17	37
38	1,708 10	1,733 10	1,745 60	58 54	28 85	14 32	38
39	1,689 30	1,714 30	1,726 80	59 19	29 16	14 47	39
40	1,669 90	1,694 90	1,707 40	59 88	29 50	14 64	40
41	1,649 80	1,674 80	1,687 30	60 61	29 85	14 81	41
42	1,629 00	1,654 00	1,666 50	61 38	30 22	15 00	42
43	1,607 50	1,632 50	1,645 00	62 20	30 62	15 19	43

LIFE ANNUITY RATES—FEMALES

TABLE 4

Age last birth-day	PRICE OF \$100 ANNUITY			ANNUITY PURCHASED BY \$1000			Age last birth-day
	\$100 Annually	\$50 Semi-Annually	\$25 Quarterly	Annual payment	Semi-annual payment	Quarterly payment	
44	\$1,585 30	\$1,610 30	\$1,622 80	\$ 63 07	\$31 05	\$15 40	44
45	1,562 40	1,587 40	1,599 90	64 00	31 49	15 62	45
46	1,538 80	1,563 80	1,576 30	64 98	31 97	15 85	46
47	1,514 50	1,539 50	1,552 00	66 02	32 47	16 10	47
48	1,489 50	1,514 50	1,527 00	67 13	33 01	16 37	48
49	1,463 80	1,488 80	1,501 30	68 31	33 58	16 65	49
50	1,437 40	1,462 40	1,474 90	69 57	34 19	16 95	50
51	1,410 30	1,435 30	1,447 80	70 90	34 83	17 26	51
52	1,382 50	1,407 50	1,420 00	72 33	35 52	17 60	52
53	1,354 00	1,379 00	1,391 50	73 85	36 25	17 96	53
54	1,324 80	1,349 80	1,362 30	75 48	37 04	18 35	54
55	1,294 90	1,319 90	1,332 40	77 22	37 88	18 76	55
56	1,264 30	1,289 30	1,301 80	79 09	38 78	19 20	56
57	1,233 00	1,258 00	1,270 50	81 10	39 74	19 67	57
58	1,201 10	1,226 10	1,238 60	83 25	40 77	20 18	58
59	1,168 70	1,193 70	1,206 20	85 56	41 88	20 72	59
60	1,135 90	1,160 90	1,173 40	88 03	43 07	21 30	60
61	1,102 80	1,127 80	1,140 30	90 67	44 33	21 92	61
62	1,069 60	1,094 60	1,107 10	93 49	45 67	22 58	62
63	1,036 50	1,061 50	1,074 00	96 47	47 10	23 27	63
64	1,003 60	1,028 60	1,041 10	99 64	48 60	24 01	64
65	970 90	995 90	1,008 40	102 99	50 20	24 79	65
66	938 50	963 50	976 00	106 55	51 89	25 61	66
67	906 60	931 60	944 10	110 30	53 67	26 48	67
68	875 50	900 50	913 00	114 22	55 52	27 38	68
69	845 40	870 40	882 90	118 28	57 44	28 31	69
70	816 40	841 40	853 90	122 48	59 42	29 27	70
71	788 60	813 60	826 10	126 80	61 45	30 26	71
72	762 00	787 00	799 50	131 23	63 53	31 26	72
73	736 60	761 60	774 10	135 75	65 65	32 29	73
74	712 40	737 40	749 90	140 37	67 80	33 33	74
75	689 40	714 40	726 90	145 05	69 98	34 39	75
76	667 60	692 60	705 10	149 79	72 19	35 45	76
77	647 00	672 00	684 50	154 55	74 40	36 52	77
78	627 60	652 60	665 10	159 33	76 61	37 58	78
79	609 40	634 40	646 90	164 09	78 81	38 64	79
80	592 40	617 40	629 90	168 80	80 98	39 68	80

The preceding tables, which are in common use by life insurance companies, will give the life annuity rates for all ages from three to eighty years, the rates for ages above eighty years being the same as for that age, and *pro rata*, allowances being commonly made for each quarter of a year which may have elapsed since the last birthday of an annuitant.

A glance at Table 4 will show that the principal of three thousand dollars, belonging to the woman of the case which has been supposed, if invested in an annuity, the age of the annuitant being seventy-five years, will furnish, during the remainder of her life an income which will be equal to $3 \times 34.39 = \$103.17$ per quarterly payment, $3 \times 69.98 = \$209.94$ per semi-annual payment, or $3 \times 145.05 = \$435.15$ per annual payment. If the annuitant shall be satisfied with semi-annual payment, her annual income from the annuity will be $2 \times 209.94 = \$419.88$; and if she shall desire quarterly payment, her annual income from the annuity will be $4 \times 103.17 = \$412.68$. At the ordinary rates of income from investments, the principal of three thousand dollars will not be able to return an annual income greater than one hundred and fifty dollars. It is therefore evident that, in the supposed case, the elderly woman will obtain very substantial benefits from the methods of life annuities, although, at her death, nothing will remain of her property for distribution among her heirs.

An application of the general rules of investment to the principles of life annuities will show at once that life annuities will not fulfil, to the satisfaction of investors, the necessary requirements of good investments; moreover, it is to be apprehended that few investors will consent to the sacrificing of principals, and the consequent disadvantage to heirs and descendants which the system necessarily requires. For urgent cases, such as have been suggested, there appears to be no satisfactory alternative, and the method of life annuities is therefore to be recommended.

So great appears to be the public confidence in the responsibility of the large and prosperous life-insurance companies

that certain persons of large means are commonly stated to have made use of the system of life annuities for the purposes of direct investment, probably with a view to the avoiding of the trouble and difficulties which generally attend the ordinary methods of investment.

When, because of the necessity which should properly constitute the reason for the purchasing of life annuities, or because of the wishes of investors, it shall be decided to make use of the system of life annuities, the one necessary suggestion, with regard to precaution, will be that none but companies of the highest reputations and the greatest amounts of capitals and surpluses shall be dealt with.

The process of purchasing a life annuity is usually very simple. The proposed annuitant has but to select the company in which to purchase the annuity ; satisfy the officers of her age (no physical examination being required) ; pay the amount of the purchase price ; and receive her annuity policy or agreement, stating the amount of the annuity and the times of payment.

An annuity may be collected either by going in person to the offices of the company which has agreed to pay it, or by sending to the company a messenger, or even a letter, with satisfactory evidence that the annuitant is living at the time.

Signing Papers.—Warnings against the careless and indiscriminate signing of papers and documents have long ago become so common that an unreasonable tendency towards timidity in this respect may often be noticed among inexperienced women.

Very numerous have been the stories concerning women who of right should be in comfortable circumstances, but who, by the thoughtless and unintelligent signing of documents, have "signed away" their properties without proper compensation, and have thus rendered themselves poor.

Undoubtedly such stories are, in the majority of cases, greatly exaggerated ; for, in a general way, it may be said that the law will not allow persons to be defrauded of their properties simply by the ignorant signing of certain legal instruments. If promptly invoked, the principles of equity

will relieve such persons from the consequences of their mistakes in all cases where substantial justice shall require such relief. It follows that, in the majority of cases, where property rights have been fraudulently obtained by means of the careless signing of papers, the losses have been due as much to negligence in bringing the necessary legal proceedings for the righting of the wrongs as to the signing of the papers.

Nevertheless, the thoughtless signing of papers cannot be too strongly condemned. There are numerous cases in which, because of the rights and interests of third parties who have acted in good faith, the laws may be powerless to prevent the evil and disastrous results which may follow such acts of thoughtlessness.

The remark that the tendency of writing extensively over one's signature is to be generally discouraged, may also be made in this place. Indeed, the unexpected turning up of forgotten writings and signatures have, on many occasions, been the source of great inconvenience and annoyance to the authors, even if it has not been the cause of serious difficulty and injury.

A perfect practice for the avoidance of the possible dangers at present under consideration will consist of refusals to sign names to any papers until the contents, characters, and legal effects of the papers shall be thoroughly understood. The application of this safe and reliable method will evidently, in many cases, require the exercise of patience and labor in the reading and understanding of long, tedious legal documents. The generous disposition to economize the time of others, who may be in waiting, also militates against the careful employment of this practice. But there can be no other rule in the premises which will entirely answer the purpose. It must therefore be adopted as the general rule.

Experience will lead the way to an avoidance of a considerable part of the labor of reading and understanding documents and instruments which are to be signed by cultivating an aptitude for quickly appreciating the gists of documents,

and for easily distinguishing the important parts, which must be clearly understood, from the unimportant parts, which may be more lightly glanced at.

There are many cases in which signatures are to be used merely for the purposes of attestation, or of witnessing the signatures of others. In such cases, there will be no necessity for understanding the characters and the contents of the documents, except that witnesses should be sure of the purposes of their signatures—that is, that their names are to be signed simply as witnesses to the execution of papers.

For this purpose, the printed or written words above and preceding the places for signatures in documents of various kinds, will often serve as sufficient guides. If immediately above or preceding the place for the signature there shall be such words as, "In witness whereof the parties to these presents have hereunto set their hands," or "Signed, New York, January —, 1898," or simply "Signed," the signature which is desired will evidently be that of a principal to the agreement. If the words above the place for the required signature shall be such as "Signed, sealed, and delivered in the presence of," or "Sealed and delivered in the presence of," or "In presence of," or "Witness," the signature will evidently be that of a subscribing witness only.

The custom of signing blank or unfinished documents, in order to save time, and trusting that the documents will be properly filled out afterwards, is to be entirely avoided by all persons of ordinary prudence, for reasons which need not be mentioned here.

All such proceedings as the signing of indemnity bonds, the indorsing of notes for the accommodation of others, and the signing of agreements of surety for the purpose of guaranteeing the conduct of others are exceedingly dangerous. There may be cases in which such proceedings cannot be avoided, but in such cases the greatest care should be exercised, and full understanding of the natures of the obligations should be had. Liability upon such agreements may endure for long periods—commonly twenty years—and

not unfrequently the vicissitudes of the years will be easily sufficient to upset the calculations of the shrewdest observers.

Powers of Attorney.—A power of attorney is an instrument which authorizes a person to act as agent (or attorney-in-fact, as distinguished from attorney-at-law or attorney-of-record) for the person who shall execute the power, either in a general manner (in which case the power of attorney is said to be a *general* one), or for some particular specified purpose (*special* power of attorney). The general object of powers of attorney is to enable agents to perform certain acts for their principals, which are beyond the ordinary authorities of agents (such as the execution of deeds), and which cannot be conveniently performed by the principals themselves.

Although powers of attorney are in general strictly construed by the law, the authority which is conferred by them will be construed to be ample for the purposes which are required. Unless specially limited by the powers, the authorities of attorneys-in-fact will be, for the purposes of the power, co-extensive with those of the principals themselves, although the making of powers of attorney will not deprive the principals of the authority to act for themselves.

The general principles of prudence and caution are, without doubt, against the advisability of executing powers of attorney, seeing that these principles strictly prohibit all unnecessary reliance upon others. Accordingly, the general rule will be to dispense entirely with all such delegations of authority.

But there are often occasions when, by reason of sickness, absence, or other disability, powers of attorney cannot be dispensed with. In all such cases care may well be taken that the authority which shall be conferred by powers of attorney shall be strictly limited to the desired purposes; in other words, whenever it shall be possible, only the strictest kinds of special powers of attorney should be executed.

For the same reasons of precaution, when powers of attorney have been granted, and the necessity for them shall have ceased to exist, they should be at once annulled by the filing

or recording of revocations, in the proper public offices of record. That revocations of powers of attorney shall be promptly placed on record in the proper offices is especially important, because of the fact that, although the powers may have been properly and legally revoked, as between principals and attorneys, the principals will still be bound to other parties, who shall have no knowledge of the revocations, by the unauthorized acts of the attorneys-in-fact, and the placing upon record of the revocations is declared by law to be constructive notice to all persons.

Lawyers.—The profession of the law is composed of many different branches, some of which are practically quite distinct from others. Thus, the first distinction may be between the *criminal* or penal law, which deals only with the punishment and the prevention of crimes, and the far more complex and extensive *civil* law, which may be said to comprehend all the innumerable rules of courts and legislatures which have been devised for the regulation of human conduct, except those of a penal nature.

Civil lawyers and criminal lawyers may, for all practical purposes, be regarded as being in entirely different professions, the latter being often comparatively ignorant of the criminal law, and the former being, far more frequently, quite ignorant of the civil law.

And so great are the profundities and refinements of the civil law that very many civil lawyers eventually become engaged in special branches (such as admiralty practice, patent law, mercantile or commercial law, litigations and the collection of debts, corporation law, and the laws relating to real property and investment) for which their faculties, tastes, and educations appear to make them especially competent.

From these remarks it will be evident that the best results are to be obtained by the employment of lawyers whose practices are mainly devoted to the branches of the law which comprehend the particular business for which their services shall be required. Investors may, therefore, wisely see to it that, for general purposes, they shall employ only

lawyers who are experienced and well qualified in all the branches of the law which relate particularly to real property, investments, and probate matters.

Investors and owners of property become accustomed to the frequent employment of lawyers for the purposes of consultation and advice in legal matters. For this reason, presumably, there often appears a tendency among investors to consult lawyers upon matters which are not strictly of a legal character, and which involve rather the exercise of judgment with regard to investments than legal ability. This tendency is obviously not to be encouraged ; for it is not to be doubted that ability and experience in the practice of a highly technical profession and the lack of sound judgment and acuteness in the ordinary affairs of life are not necessarily incompatible in one and the same individual. With regard to all transactions and affairs which are to be considered apart from the legal aspects, no distinctions may safely be made in favor of advisers whom it may be necessary to consult because of their purely legal attainments.

Pecuniary Reputations.—The reputation of having a fortune much larger than is actually possessed, or of having an income greatly in excess of one's real income, is surely to be considered as a misfortune ; for, in such a case, the only escape from the general reputation of niggardliness and cupidity will be by means of a ruinous extravagance.

Conversely, it may be stated that the reputation of having a smaller property or a smaller income than the actual one is to be regarded as a piece of good fortune ; for, in such a case, there will be no necessity to choose between the evils which have been mentioned.

The former reputation is, therefore, beyond question, to be avoided, as the latter is equally to be encouraged.

It may be remarked that the accomplishment of these objects will not always prove to be a simple task, especially in cases where persons are possessed of large fortunes. Nevertheless, there are suggestions, with regard to a general deportment, with a view to the accomplishment of the desired objects, which may well be given here.

In the first place, then, wise persons of wealth will seek always to avoid extravagance and ostentation, especially in directions which will be most plainly manifest to the public, since it cannot be denied that the public tends constantly toward the vulgarities of talkativeness and of exaggeration. For similar reasons, the appearance of frugality, and hesitation concerning large expenditures may be judiciously cultivated, and the real or assumed general indifference to the value of money, which marks the upstart, may be studiously avoided. For these purposes, no more valuable practices can be suggested than the quick detection of overcharges and mistakes in bills, and prompt and energetic protests against such occurrences. The appearance of having some occupation, or a means or a partial means of livelihood, though in many case it may be difficult to maintain, will go far towards the acquirement of the much-to-be-desired reputations.

Ordinary delicacy and common sense ought to suggest that owners of property shall keep their affairs to themselves, declining always to converse unnecessarily concerning their own means, and generally abstaining from all ordinary conversations upon the subjects of money and property.

It may be that, to persons whose consciences are far more sensitive than are consciences in the majority of cases, the suggestions which have been offered will seem to be objectionable, because they appear to involve a certain amount of dissimulation.

The common casuistic principles, that we are not bound to impart information to those who have no right to interrogate, and that for just cause we may permit our neighbors to deceive themselves, if accepted, will be able to overcome the objection ; for, surely, the undertaking on the part of the public to ascertain, or to estimate, for purposes of curiosity only, the conditions of private personal affairs is an impertinence which is without a semblance of right, and which is deserving only of rebuff ; moreover, the purposes of the conduct which has been suggested are, beyond question, just and blameless.

It is probably safe to say that the large majority of

honorable and conscientious persons will consent to regard the objection in question as an unnecessary and a squeamish refinement ; or, at least will agree that it may be satisfactorily disposed of in the manner which has been mentioned. But, be this as it may, the matter is one which must be left for the determination of individuals, and the objection, and its supposed counterpoise having been stated, further consideration of the subject in these pages may be dispensed with.

Precautions against Theft and Petty Frauds.—Persons who are possessed of wealth, and especially those who maintain elegant residences, are necessarily more or less in danger of robbery ; though it has been said, and not without reason, that carelessness will offer better inducements to the robber than will riches.

The first principle to be observed for the prevention of house robbery will be to allow and encourage the general opinion that residences are well guarded, and that very few valuables, such as money, bonds, jewelry, etc., are to be found in the residences, these being not mere pretensions, but actual facts, to the full knowledge of which the public should be welcome.

The ordinary precautions of having good substantial fastenings for doors, windows, and scuttles, and of carefully attending to the locking up of houses at night, need not be enlarged upon. Standard burglar alarms and wide-awake dogs may pass, with little comment, as excellent safeguards. Indeed, few things may be more safely calculated upon for the sudden disarrangement of buglarious plans than the energetic action of a well-regulated burglar alarm, or the equally energetic and penetrating barking of even the most insignificant of dogs.

In suburban neighborhoods, the general public knowledge that there are in certain residences husbands and sons, or even ladies who are accomplished in, and fond of, the use of firearms, may be a sufficient explanation for the fact that such residences are often quite free from the visits of burglars. No residence should be without its proper supply of approved revolvers, carefully placed out of the reach of children and

of others to whom they will be dangerous, and within easy reach of the proper parties; and in case of attempted burglary these weapons should be brought into such prompt and active operation as to serve as substantial warnings to burglars who may, in the future, consider the advisability of repeating attempts at burglary.

The bank account, the safe deposit, and prudence in keeping all knowledge of the whereabouts of valuables from servants and from the public, will be sufficient means of living up to the principle of precaution which requires the general opinion that valuables are not kept in residences.

The expediency of keeping so-called burglar-proof safes in residences has been seriously questioned, upon the ground that the mere presence of such articles will be a suggestion to the public that valuables are kept in the residences. On account of the cumbersome nature of burglar-proof safes, they cannot be readily moved into residences without attracting the notice of the public, and it may well be supposed that burglars and thieves will be no less observing of such matters than will be the majority of persons.

The practice of carrying considerable sums of money upon the person must be considered as a dangerous one, since it may serve as a notice to thieves that an assault upon the individual for purposes of robbery will not be without its substantial rewards. If, therefore, for any reason, it shall be necessary that considerable sums of money shall be carried about on the person, a wise precaution will be the secure concealing of the greater part upon the person, while a smaller part of the money may be carried in the usual manner for immediate uses.

The common petty frauds, such as overcharges, false charges, repeated charges, etc., which are often attempted upon persons of means, may easily be frustrated by such ordinary precautions as the preserving and filing of bills, the examining of all bills before payment, and the keeping clearly in mind, by means of memoranda if necessary, of the various transactions for which charges are to be paid.

One of the most fruitful sources of profit to persons whose

practice it is to defraud the generous well-to-do, is the practice of borrowing money. A certain difficulty in refusing to lend small sums to those whose sad stories may appeal to the sympathies is commonly experienced by all generous and kind-hearted persons, and with all such facts accomplished borrowers are entirely familiar. The most practical remedy for such difficulties will evidently be the adoption of a general rule not to lend money in the ordinary gratuitous sense of the word. The rule may, of course, be suspended in special cases among intimate acquaintances, and also in cases where the lending will be required by the actual demands of charity. In cases of the latter kind, the reputation of being easy lenders may be avoided by plainly stating to the borrowers that the money which is supposed to be loaned is freely given, without expectation of repayment, unless, by fortunate changes of circumstances, repayment, at some future time, shall become convenient for the borrowers.

There are many cases in which dishonest borrowers appear to have certain claims, founded upon old family friendships or kinships, which are very difficult to resist, and which are commonly pressed in correspondingly ardent manners by the unworthy borrowers. An excellent method of terminating such causes of embarrassment will be the lending of certain sums upon conditions of repayment (regularly provided for by written agreements), which will certainly be broken by the borrowers, and which will then have the effect of keeping them at distances in the future. This method of purchasing immunity may be illustrated in the following manner : Suppose that the lender shall advance to the borrower a certain sum of money, with a written and witnessed agreement to the effect that, if the loan shall not be repaid on or before a specified date, a valuable piano, set of jewelry, or other article belonging to the borrower shall then become the absolute property of the lender, and shall be delivered to the lender by the borrower, the article named to remain in the possession of the borrower until default shall be made. In such a case, default having been made in the promised repayment of the loan, the fear of losing the hypothecated article may be safely

calculated upon to interrupt the intimate relations which have previously existed between the parties. And even if the audacity of the borrower shall be equal to the task of undertaking to repeat the transaction, the lender will have ample grounds for reminding the borrower of the condition broken, and for a peremptory refusal to advance further sums of money.

Persons of Unsound Minds.—It sometimes happens that owners of property, upon whom other members of their families are dependent for sustenance, become incompetent to manage their property, by reason of insanity, habitual drunkenness, or other causes. In such unfortunate cases, in order to prevent the wasting and squandering of property and the consequent evil results to the families of the unfortunate ones, it becomes necessary to provide methods by which property may be taken out of the control of its incompetent owners and placed in the hands of others who shall be competent for its preservation and good management. The law, therefore, authorizes those who are properly interested in the estate of a person of unsound mind to apply to the courts for the appointment of a committee or guardian for the estate, and, upon sufficient proof of the unsoundness of mind, these officers, appointed by the court, will, under the supervision and regulations of the law, have the sole charge and management of the estate, in much the same manner as do guardians of the estates of infants.

The great grief which necessarily comes to the members of a family because of the plainly approaching insanity of a loved parent, husband, or other relative, and the strong, natural disinclination to take legal proceedings which will declare, seemingly to all the world, the insanity and incompetency of the loved one, tend to prevent, or to delay until serious consequences ensue, the taking of proper legal steps for the preservation of the property and the protection of those who have immediate claims upon it. The final results of such natural and even laudable feelings may be so grave and unfortunate, not only for the person who shall be afflicted with unsoundness of mind, but to all the family, and possibly

for many generations in the future, that, difficult and painful as the task may be, all questions of sentiment and of family pride must be waived, and the necessary steps must be promptly taken in all cases where there shall be sufficient grounds for serious apprehension.

And so insidious and gradual are the processes by which the sound mind may become unsound, that wise and prudent persons, while they will not allow themselves to be prompted by unreasonable apprehensions concerning the mental conditions of their friends and relatives, will not be unmindful of the grave possibilities, and will endeavor to be prepared for such misfortunes, should they be called upon to endure them.

It is generally supposed that any marked tendencies toward entire changes of character and disposition — as from accustomed gravity and seriousness to frivolity and thoughtlessness, or from uniform kindness and gentleness to irascibility — may well be considered as alarming circumstances. So also may sudden and unexplained changes in usual methods of doing business, of managing property, or of expending money. In all cases in which there appears to be good reason to fear coming unsoundness of mind in friends or relatives, the first steps may properly be consultations with family physicians ; and, having in this manner fully determined the extent of the danger, the remaining proceedings must necessarily be taken with the assistance of lawyers.

The suggestions which have been made under the present heading will apply, with such modifications as the characters of cases may require, also, to all persons who may have any charge or control of the affairs of investors. Thus, lawyers, insurance agents, real estate agents and brokers, etc., must be considered, at all times, as within the category of those whose faculties and mental powers may fail, to the lasting injury of the investors whose important matters they may have in charge.

Especially should the attention of investors be directed to the subject which is under consideration in cases where their lawyers or agents are elderly men who show signs of coming

infirmity. Cases are by no means rare in which lawyers and agents, who have conducted their own and the affairs of others wisely and successfully until the infirmities of age have stolen almost imperceptibly upon them, have finally been the means of bringing great embarrassment and financial losses to their clients and patrons.

It cannot be denied that old men whose faculties are unimpaired and whose physical activities are unaffected by their ages will have the important advantages of experience and of accumulated knowledge and perception over younger men. But the active, alert, shrewd man, in the prime of life and vigor, who has both a studious past and a hopeful future, will, in the large majority of cases, prove to be far more useful for the general purposes of investors.

The question of sympathy for lawyers or agents who shall show signs of the evil effects of old age must not be allowed to influence investors in the selection or changing of these assistants; for in many cases the costs of such influences will be indeed unreasonable. The only safe rule with regard to the matter which is in question will be that investors shall not employ lawyers or agents who shall give any indications of the ill-effects of old age or of infirmity; that investors shall promptly change their lawyers and agents whenever such ill-effects shall be apparent; and that, in all doubtful cases, investors shall be careful to give themselves the full benefit of all doubts.

Advisers in Business Matters.—The best rule, concerning advisers in matters of business, which can be devised, is that investors shall be their own advisers; which rule will permit of the fulfilling of another valuable rule—that investors shall keep their business affairs strictly to themselves. But the first-mentioned rule evidently presupposes a certain degree of business education and ability on the parts of investors, which, in fact, will not be possessed by every owner of property.

The rule with regard to advisers in business matters which will best suit investors who shall not possess the necessary business abilities may be stated in this manner:

Investors must make it their serious business to acquire

the necessary business educations and abilities, seeking in the meantime only, and when such action shall be unavoidable, the advice of others who shall be honest, experienced, and successful.

For the purpose of aiding in the selection of such advisers, the following suggestions may be offered :

Those whose advice concerning the investment of property shall be sought must themselves be actual investors. For, evidently, successful manufacturers, farmers, business men, or professional men may be not at all familiar with the subject of investments. And the suggestion may be further amplified by the requirement that advisers shall be successful in the precise kind of investments concerning which their advice may be required. Investors differ materially in their preferences and practices. Thus, certain investors will invest their means only in purchases of real estate; others may prefer to own no real estate at all; and of the latter class, one investor may invest entirely in mortgages, while another may be a firm believer in bonds and other forms of personal securities. Each may be experienced, sagacious, and successful in his own particular line of investment, and inexperienced or unsuccessful with other kinds of investment.

If it shall be necessary to select, from the list of kinds of businesses, those which will probably furnish the worst possible advisers in the greatest number of cases, the selection may advantageously include stock brokers and real-estate brokers and agents. And sufficient reasons for this statement will be the fact that the former may be the means of causing investors to depart from the regular rules of precaution and to speculate in dangerous kinds of bonds and stocks, while the latter, with the confidence of those who are constantly within sight of large and successful investments, may not hesitate to suggest so-called investments which will be impractical and ruinous.

A general rule may be that advisers, in addition to the possession of the qualities which have been mentioned, must be without direct personal interest in the particular matters upon which their advice shall be sought—or, perhaps more

accurately, that the conditions of advisers must continue to be the same whatever shall be the final determinations of the inquiring investors. And this rule will evidently prohibit direct business transactions with advisers unless it be to pay them for their services certain amounts which shall not be dependent upon the final acceptance of their suggestions.

Another suggestion, with regard to advisers in matters of business, may be that investors who shall not yet have attained the desired conditions which will enable them to act as their own advisers shall compare the advice which may be given them with the general methods and practices of the advisers, or with the special conduct of advisers in cases which are similar to the particular ones concerning which the advice has been given. If an adviser shall recommend certain courses of action which shall be plainly contrary to those which have been pursued by the adviser under similar conditions, the doubts of the seeker after advice may well be excited.

The suggestions which have been made under the preceding heading must be especially borne in mind in connection with the present subject. And, finally, it may be remarked (by way of repeating a suggestion, the importance of which will warrant the repetition) that investors must strive without ceasing to fulfil speedily the conditions which will permit of the dispensing with all advice from others concerning their methods of investment, realizing clearly the fact that the sooner they shall be able to fulfil the required conditions, the sooner will they be removed from positions which may, and perhaps in the majority of cases will, lead to the making of bad investments and to consequent difficulties and loss of property.

Bills of Exchange and Promissory Notes.—In another part of this work, a general suggestion concerning the avoidance of all obligations of the nature of bills of exchange and promissory notes has been made. And, although it is greatly to be desired that those for whose benefit and instruction this work has been written shall be able at all times to accept the suggestion which has been mentioned, and to dispense entirely with the accepting, signing, and indorsing of such obligations, nevertheless it is deemed to be necessary that

the subjects of bills of exchange and promissory notes shall receive at least general explanations here.

A bill of exchange is a written order, made by one party (the drawer) to a second party (the drawee) directing the second party to pay to a third party (the payee) a certain specified sum of money at a certain specified time.

A *foreign* bill of exchange is one the drawer and drawee of which reside in different countries, or in different States of the United States.

An *inland* bill of exchange is one the drawer and drawee of which reside in the same country, or in the same State of the United States.

The explanations and suggestions which are contained in Chapter II. of this work concerning indorsements, dishonoring, protest, etc., apply in all respects (with such modifications as the evident differences between bank checks, bills of exchange and promissory notes will suggest) to bills of exchange and promissory notes.

Bills of exchange may be made payable either *at sight* (on presentation to the drawees) or at specified times, which are later than their dates (as "thirty days after date," "sixty days after sight," or, "on the first day of June, 1900"). In either case, bills of exchange must be presented to the drawees for payment upon the days of their maturities; in the latter case, they must be presented to the drawees as soon as such presentations shall be possible for *acceptance*, or the writing across the faces or backs of the bills by the drawees of the word "Accepted," their signatures, and the dates of the acceptances, the drawees then becoming the *acceptors*.

The usual form of a bill of exchange is as follows :

BOSTON, Feb. 1, 1900.

At sight (or days after sight, or days after date,
or on the day of , 19) pay to the order of John
Doe one thousand $\frac{00}{100}$ dollars and charge the same to the
account of RICHARD ROE.

\$1000. $\frac{00}{100}$.

TO MR. WILLIAM WHITE,
124 Narrow St., New York City.

Miscellaneous Remarks and Suggestions 415

Such a bill of exchange is said to be *negotiable* because, being made payable to the order of the payee, it may be transferred by him to others (and by them to third parties, and so on) by indorsement. If a bill of exchange is made payable to the payee personally, the words "the order of" before the payee's name, being omitted, the bill will be *non-negotiable*.

The general reasons for and the purposes of bills of exchange may be indicated by an example in the following manner :

Suppose that John Doe, of No. 10 North East Street, Chicago, is indebted to Richard Roe of Boston in the sum of one thousand dollars, and that Richard Roe is indebted to William White in the same amount. If the two debtors shall be able to pay their debts, the regular and simplest method of doing so will be the sending of properly drawn checks by the debtors independently to their creditors. But, suppose that Richard Roe shall be unable to pay his debt to William White, unless he shall first collect the amount which is due him from John Doe ; that Roe's creditor shall be pressing in his demands for the payment of the debt ; that Doe, being sure of receiving sufficient funds for the payment of his debt to Roe within sixty days, shall agree to accept a bill of exchange drawn by Roe (or that Roe shall decide to draw upon Doe for the amount of the debt, trusting that, rather than have his paper protested, Doe will accept and pay the bill of exchange) ; and that White shall agree to receive and collect the bill of exchange. In this case the bill of exchange will be as follows:

BOSTON, Feb. 1, 1900.

Sixty days after date pay to the order of William White one thousand $\frac{00}{100}$ dollars and charge the same to the account of

RICHARD ROE.

\$1000. $\frac{00}{100}$.

TO MR. JOHN DOE,
10 North East Street, Chicago, Ill.

If the bill of exchange shall be properly accepted by Doe, and paid by him at maturity, the result of the transaction will be the discharging of the two debts (Doe to Roe and Roe to White) by the payment of the single bill of exchange. In other words, the two debts will have been *exchanged*.

From the understanding of the subject of bills of exchange, which should now be sufficiently clear, it will be evident that such methods will often be practically unavoidable to men who are actively engaged in certain regular businesses. It will be equally evident that occasions upon which the obligations and collections of investors may not be capable of arrangement by means of ordinary bank checks should seldom, if ever, arise.

A *promissory note* (or commonly a "note") is a written promise on the part of the drawer or maker to pay to the order of the payee (by name) a specified amount of money at a specified time. The usual form of a promissory note is as follows :

NEW YORK, Feb. 1, 1900.

On demand (or days after date, or months after date, or on the day of , 19) I promise to pay to the order of John Doe, one thousand $\frac{00}{100}$ dollars (with interest) for value received.

RICHARD DOE.

\$1000. $\frac{00}{100}$.

Sometimes promissory notes specify also the places of payment, — for example, after the words "order of John Doe," in the above form, may be inserted the words "at No. 100 Narrow St., New York City," or "at the Twentieth National Bank of Boston."

The principal purposes for the making of promissory notes are : on the parts of the makers, the borrowing of money and the postponing of the payment of debts until such times as shall be more convenient ; on the parts of the payees, the obtaining of written evidences of debts, the obtaining of money by means of the discounting of the notes, and the

obtaining of obligations which, although the makers may be irresponsible persons, may be paid in order to avoid the disadvantages which may result from the dishonoring and protesting of the notes.

Concerning the purposes of the makers of promissory notes, it may be said that they should have no application to regular and careful investors ; more dangerous practices than the frequent signing and indorsing of notes can scarcely be mentioned. They are responsible for numberless and immense losses of property. Investors should therefore adopt an invariable rule to the effect that they will never sign or indorse promissory notes except when extraordinary circumstances shall render it necessary for them to do so. And if such unfortunate circumstances shall arise, investors must consider the probabilities that they will finally be compelled to pay notes which they have signed or indorsed as actual facts, and, by making careful memoranda of the amounts, dates, other signers' and indorsers' names, etc., and by arranging their affairs accordingly, they must be fully prepared to meet the obligations when they shall become due.

With regard to the purposes for which investors shall receive promissory notes from others, it may be remarked that in the majority of cases they will prove not to be practical, because of the irresponsibility and dishonesty of the makers and indorsers. It is doubtless very generally true that persons who will not pay their honest and lawful ordinary debts, will not pay the promissory notes upon which they shall be legally liable. It is evident that, if an investor shall discount a worthless note upon which he is the payee, the transaction will result in the payment of the note upon its maturity by the investor, and in the consequent loss of the discount, interest, and perhaps protest fees.

The practical rule with regard to the receiving of promissory notes by investors, therefore, appears to be that there are but two classes of cases in which notes will be of any service whatever : first, the class of cases in which there shall be no reasonable doubts concerning the ample responsibilities of the makers or indorsers ; and second, the class in which

the debts for which the notes shall be given will be difficult to establish in legal proceedings, and the notes may therefore be valuable as evidences of the debts, and for the purpose of otherwise simplifying and making more effective necessary proceedings at law.





INDEX

A

Abbreviated names, 23
 Ability to estimate incomes, 9
 Absolute safety impossible, 2
 Accommodation indorsements, 37
 Accounts
 Of incomes and expenditures, 6;
 Of mortgages, 180; Of rents, 339
 Actual amounts of mortgages, 165
 Actual securities, 107
 Adage of the fool, 1
 Administration, letters of, 376
 Administration of estates, 376
 Administrators
 Accounting, 380; and executors, 372; Appointment of, 376; Assistance of the courts, 380; Bonds of, 349; Collection of assets, 377; Discharge of, 380; Duties of, 376; Inventories, 378; Legal advice, 376; Number of, 370; Payment of debts, 379; Powers of, 379; Take personal property, 375; Trust companies as, 368
 Adverse possession, 216
 Adverse possession, title by, 193
 Advisers in business matters, 411
 Agencies, mercantile, 308
 Agencies, mortgage, 168
 Agents, insurance, 275
 Agents, real estate, 280
 Agreements between joint owners, 251
 Alienation of property, 355
 Alterations in real estate, 268
 Ample securities, 101
 Annuities, 392

Anxiety to sell real estate, 225
 Architects, 238
 Arrangement of buildings, 241
 Assignment of mortgages, 174
 Assistance of the courts, 380
 Associations, building loan, 208
 Associations of taxpayers, 262
 Attorney, powers of, 402
 Attorneys at law, and in fact, 402
 Auction sales, 226
 Avarice as to rents, 299
 Avaricious investors, 116

B

Backhand signatures, 22
 Bad investments, 223
 Balancing
 Of bank-books, 55; Of check-books, 60; Of pass-books, 72
 Bank-account, 14
 Making deposits, 41; Opening a, 21; Overdrawing a, 30; Reduction of balance, 21; Value of, 14
 Bank-book, 22
 Bank checks, 24
 Cashiers' checks, 35; Certification, 33; Charged against depositors, 62; Credit of, 32; Destruction of, 62; Die with their makers, 41; Dishonoring of, 40, 64; Drawer or maker, 24; Forgeries of, 31; Form of, 25; How drawn, 24; How indorsed, 35; Illustrations of, 27; Indorsee and indorser, 24; Loss of, 40; Memorandum, 29; Not good or no account, 62; Num-

Bank checks — *Continued*

bering of, 54; Payable to bearer, 25; Payable to cash, 25; Payee, 24; Post-dated, 29; Prompt depositing of, 54; Protest of, 40; Raising of, 28; Vouchers, 55

Banking hours, 42

Bank-notes, 15

Bank officers and clerks, 21

Banks, 14

Capitals of, 18; Deposit ticket, 41; Discounting of notes, 19; Distinguished from savings banks, 14; In small cities and villages, 18; Investment of funds, 17; Kinds of, 15; Laws affecting, 17; National, 15; Officers of, 21; Private or individual, 15; Signatures at, 22; State, 15; Statements of, 20; Surpluses, 18

Bargain and sale deed, 194

Bequest, 347

Bills of exchange, 413

Bond and mortgage, 136

Bonds, 172

And stocks, 119; Condition, 172; County, 122; Covenants, 173; Exemption from taxation, 125; Government, 121; Municipal, 120; Of cities, 122; Of corporations, 128; Penalty, 172; Railroad, 131; Real estate, 172; State, 122; To secure improvements, 316; Town, 122; United States, 121; Village, 122

Bondsman, responsibility of, 160

Boys and girls, city and country, 203

Builders, 239

Builders' loans, 148

Building

Contracts for, 240; Inspectors, 238; Loan Associations, 208

Buildings

Arrangement of, 241; Construction of, 240; Employment of architects, 238; Examination of, 234; General styles of, 240; Insurance of, 270; One story, 238

Burglar-proof safes, 407

Business, concentration of, 246

Business of cities, 242

C

Capital stock, 127

Cashiers' checks, 35

Certainty of income, 108

Certificates of deposit, 87

Certified checks, 33

Chaffering over real estate, 225

Characteristic signatures, 22

Character of people, 123

Character of tenants, 328

Chattel mortgages, 183

Check-books, 43

Badly kept, 43; Balancing of, 60; Filing of, 63; First deposit, 50; Memoranda in, 52; Names of banks in, 50; Private balances in, 50; Valuable account-books, 51; Valuable references, 55

Checks, *see* Bank Checks, 24

Checks of trust companies, 88

Christian names, 22

Cities, increase of population, 242

City and country homes, 202

Civil damage acts, 334

Climate, 149

Codicils, 347

Collection of assets, 377

Collection of rents, 303

Commissions, 282

Common stock, 127

Companies, *see* Corporations, 126

Comparative values, 154

Competition among landlords, 299

Complicated schemes, 113

Concentration of business, 246

Concentration of property, 355

Conclusion in a deed, 194

Condemnation of real property, 213

Condition in a bond, 172

Condition in a deed, 193

Condition of buildings, 235

Conditions for safety of mortgages, 139

Conditions for success of wills, 350

Considerations affecting mortgages, 139

Considerations concerning investments, 101

Construction of buildings, 239

Contesting of wills, 361

Contracts for buildings, 240

Contracts for property, 233
 Control of securities, 107
 Conveyance, deed of, 193
 Conveyance, title by, 193
 Co-operative loan associations, 208
 Corporations, 126
 Bonds of, 128 ; Capital stock of, 127 ; Formation of, 127 ; Investment, 132 ; Land, 133 ; Legal restraint of, 126 ; Legislation against, 129 ; Loan, 170 ; Title guaranty, 142 ; Trusts, 126 ; Value of, 126
 Costly homes, 202
 Country homes, 203
 Covenants
 In bonds, 172 ; In deeds, 194 ; In ground leases, 325 ; In leases, 288 ; In mortgages, 174
 Cramped signatures, 22
 Credit of a bank check, 32
 Credit of a certified check, 33
 Curtesy, estate by, 191

D

Danger of dealing in stocks, 130
 Danger of speculation, 97
 Dangerous tenants, 334
 Decrease of incomes, 4
 Decrease of interest, 3
 Deed
 Bargain and sale, 194 ; Covenants, 194 ; Full covenant, 194 ; Parts of a, 193 ; Quit-claim, 194
 Deeds, kinds of, 194
 Deeds, validity of, 193
 Delinquent taxes, 227
 Deposits
 By tenants, 310 ; In banks, 41 ; In savings banks, 70 ; In trust companies, 86 ; Special or time, 21
 Deposit tickets, 41
 Depression, periods of, 223
 Descent, 345
 Heirs, 347 ; Intestates, 347 ; Title by, 193
 Destruction of checks, 62
 Destruction of wills, 370
 Devise, 347
 Devise, title by, 193
 Devisee and devisor, 347

Disabilities of married women, 381
 Discharge of executors and administrators, 380
 Discharge of mortgages, 175
 Discounting of notes, 20
 Discrimination against non-residents, 215
 Dishonoring of checks, 40, 64
 Disposition to save money, 3
 Disreputable neighborhoods, 304
 Disreputable tenants, 331
 Dissolute children, 362
 Distribution, 346
 Administrators, 347 ; Next of kin, 347 ; Of principal, 10
 Division of real estate, 248
 Dower, estate in, 191

E

Eminent domain, 213
 Encumbrances, 142
 Entail, 355
 Equity of redemption, 136
 Erroneous indorsements, 39
 Estate, guardian of the, 366
 Estates in land, 191
 Estates, merger of, 192
 Estimates of income, 9
 Evenness of income, 10
 Examination of buildings, 234
 Examination of titles, 142
 Exception to rules of investment, 121
 Exchange, bills of, 413
 Exchanges of real estate, 223
 Executors, *see* Administrators, 375
 Exemption of bonds from taxation, 125
 Expenditures, 2
 By tenants, 313 ; Of public money, 259 ; Upon real estate, 257
 Expense account, 5
 Extension of leases, 322
 Extension of mortgages, 178

F

Failures of savings banks, 66
 Fair and regular incomes, 108

Family, status of, 354
 Family, the ideal, 2
 Fee, estates in, 191
 Fee-leaseholds, 322
 Fictitious securities, 108
 Financial responsibility, 305
 Fire clause in leases, 290
 Fire insurance, 270
 Adjustment of, 280; Agents, 275; Builders' risks, 279; Description of premises, 278; Eighty per cent. clause, 276; How invalidated, 279; Lightning clause, 279; Mortgagee clause, 159; Other insurance, 279; Rates of, 273; Renewal of, 279; Risks, 274
 First and second mortgages, 137
 Fluctuations in values, 166
 Foreclosure of mortgages, 136, 176
 Foreclosure, real estate acquired by, 228
 Forgery, 32
 Formation of corporations, 127
 Forms
 Of bank checks, 25; Of indorsements, 39; Of receipts, 179
 Fraud, precautions against, 406
 Fraudulent alteration of checks, 28
 Free and clear homes, 207
 Free and clear real estate, 253
 Full covenant deeds, 194
 Fundamental rule, 2

G

General classes of investments, 100
 General principles of investment, 96
 General rule as to deposits in savings banks, 71
 Gold the money standard, 115
 Good landlords, 299
 Government bonds, 120
 Grasping investors, 116
 Ground leases, 321
 Advantages of, 323; Covenants in, 325; Improvements, 322; Percentage of rents, 327; Perpetual, 322
 Guaranteed stock, 128
 Guardians, 372

Appointment of, 366; Duties of, 373; Natural, 365; Of the person and estate, 366; Qualifications of, 365; Testamentary, 348

H

Habendum in a deed, 193
 Hard landlords, 299
 Heavy mortgages, theories of, 253
 Hiding of valuables, 91
 Highest types of investment, 219
 Home, the perfect, 210
 Homes
 As investments, 198; City and Country, 202; Classes of, 200; Free and clear, 207; How obtained, 210; Location of, 201; Moderate, 202; Of working men, 199; Ownership of, 198; Rural, 202; Safe cost of, 204; Selection of, 200; Simple, 200; Surroundings of, 208
 Homestead Acts, 207

I

Ideal family, 2
 Ignorance of women, iii.
 Importance of land, 189
 Importance of laws concerning land, 190
 Improved and unimproved real estate, 234
 Improvement of real estate, 237
 Improvements by tenants, 313
 Incendiary tenants, 335
 Income
 And expenditure, 7; Definitions of, 12; Distinguished from principal, 11
 Income account, 6
 Incomes
 Certainty of, 108; Estimates of, 9; Evenness of, 10; Fair and regular, 108; From real estate, 230; Percentages of, 4; Rule to live within, 2
 Increase in values, 220
 Indebtedness of nations, 120
 Indentures, 287
 Individual banks, 15
 Indorsee and indorser, 24

Indorsement, 35

Indorsements

Accommodation, 37; Forms of, 39; In blank, 36; In full, 35; Methods of, 38; Qualified, 36; Restrictive, 36; Wrongly written, 39

Influence of locality, 19

Inspectors, 238

Insurance, *see* Fire Insurance, 270

Interest

Bearing stock, 128; Covenant to pay, 174; Decrease of, 3; In savings banks, 72; In trust companies, 88; Usurious, 112

Interests in lands, 191

Intervening estate, 192

Intestate, 347

Inventories of executors, 378

Investment

Absolute safety impossible, 2; Corporations, 132; Distinguished from speculation, 96; General principles of, 96; Highest types of, 219; Of funds of banks, 17; Of funds of savings banks, 66; Of funds of trust companies, 85; Real objects of, 116; Simple theory of, 114

Investments

Considerations concerning, 101; Distribution of, 10; General classes of, 100; Homes as, 201; In savings banks, 68; Joint, 108; Loan, 100; Permanent, 96; Purchase, 100; Remarkable, 301; Safety of, 101; Temporary, 96

J

Joint

Investments 108; Ownership of real estate, 248; Tenancy, 192

K

Kinds

Of banks, 15; Of deeds, 194; Of homes, 202; Of investments, 100

L

Land, *see* Real Property, 189

Corporations, 133; Equity in, 136; Estates in, 191; Importance of, 189; Permanence of, 189; Possession of, 190; Title to, 193

Landlord and tenant, 286

Agents, 280; Alterations, 268; Civil damage acts, 334; Collection of rents, 303; Commissions, 282; Deposits, 310; Expenditures, 257; Ground leases, 321; Illicit uses, 332; Kinds of business, 334; Leases, 287; Lucky and unlucky buildings, 299; Machinery, 336; Mercantile agencies, 308; Moderate rents, 299; Precautions against fire, 334; References, 307; Rent accounts, 339; Repairs, 265; Security, 310; Strength of buildings, 335; Suitable uses, 336; Sureties, 309; Surety companies, 310; Taxes, 257; Wear and tear, 336

Landlords

Avaricious, 298; Competition among, 299; Good and bad, 299

Large cities, real property in, 149

Last will and testament, 347

Laws

Against perpetuity, 356; Concerning investments, 106; married women, 381; mortgages, 144; non-residents, 215; real property, 190; taxes, 146, 218; usury, 112; Governing banks, 17; safe deposit companies, 92; savings banks, 66; trust companies, 84

Lawyers, 403

Leases, *see* Landlord and Tenant, 286

Clauses of, 287; Long and short, 293; Monthly, 294; Options in, 296; Special agreements, 292

Legacy, 347

Legal advice to executors, etc., 376

Legal age, 359

Legislation against corporations, 129
 Legislation against non-residents, 215
 Letters of administration, 376
 Letters testamentary, 376
 Lien of a mortgage, 136
 Life estate, 191
 Litigation over wills, 361
 Loan corporations, 208
 Loan investments, 100
 Loans on chattels, 183
 Loans on leaseholds, 185
 Locality
 Effect upon mortgages, 149;
 Influences of, 19; Of homes, 201; Of real estate, 242
 Long-continued accounts, 75
 Long-established savings banks, 69
 Long-possessed real estate, 211
 Loss of bank check, 40
 Loss of pass-book, 70

M

Maker or drawer, 24
 Management of estates of wards, 373
 Managing owners, 251
 Manufacturing companies, 127
 Margin of safety, 101
 Future or prospective, 221;
 Magnitude of, 104; Present, 221
 Marriage, effect of, upon wills, 371
 Married women, 381
 Married women, suggestions to, 389
 Memoranda for wills, 350
 Memoranda in check-books, 52
 Memorandum checks, 29
 Mercantile agencies, 308
 Merger of estates, 192
 Miscellaneous remarks, 392
 Money, 115
 Disposition to save, 3; Value of, 1
 Monthly tenants, 294
 Mortgage, 135
 Accounts, 180; A perfect loan investment, 139; Bond accompanying, 136, 172; Companies, 168; Form of, 135; Note accompanying, 136

Mortgagee, 135

Mortgagee clause, 159

Mortgages

Actual values, 149; Amounts of, 165; Assignment of, 174; Builders' loans, 148; Buildings, 151; Climate, 149; Considerations affecting, 139; Covenants in, 174; Debt and lien, 136; Equity of redemption, 136; Examination of titles, 142; Extension of, 178; First and second, 137; Foreclosure, 176; How destroyed, 175; Improved and unimproved land, 152; Improvements, 151; Increasing proportions of, 165; Insurance, 159; Interest, 147; Laws affecting, 144; Legal precautions, 171; Lenity toward mortgagors, 163; List of securities, 155; Locality, 149; Margin of safety, 162; Method of deciding upon, 157; Mortgagee clause, 159; Natural resources, 150; Note accompanying, 136; On chattels, 183; On leaseholds, 185; On timber and mineral lands, 151; Paid in installments, 179; Papers relating to, 182; Payment of, 175; Precedence of, 137; Principles of investment, 138; Proportions of, 165; Purchase money, 137; Purchasing of, 168; Ratios of values, 167; Receipts for interest, 179; Recording of, 171; Responsibility of bondsmen, 160; Safety of, 139; Satisfaction of, 176; Stability of values, 166; Surrounding buildings, 153; Taxation, 147; Titles to lands, 139; To secure future advances, 148; Valuation of securities, 161

Mortgagors, 135

Mortgagors, orderly dealings with, 178

Municipal bonds, 120

Mutual loan associations, 208

N

Name of bank in check-book, 50

Names, 22

National banks, 15

Natural resources, 244
 Necessary securities, 109
 Next of kin, 347
 Nicknames, 23
 Non-residents, 215
 Notes accompanying mortgages, 136
 Notes and bills, 413
 Number of executors, 370
 Numbering of bank checks, 54

O

Obligee and obligor, 172
 Occupation, title by, 193
 One-story buildings, 238
 Options in leases, 296
 Orderly dealings with mortgagors, 178
 Overdrawing accounts, 30
 Ownership of land, 196
 Complications, 248; Importance of, 190; Purposes of, 197

P

Panics in savings banks, 75
 Paper money, 115
 Papers relating to mortgages, 182
 Papers, signing of, 399
 Partition of real estate, 253
 Partnership investments, 108
 Parts of a deed, 193
 Pass-book at savings bank, 70
 Password at safe deposit company, 94
 Payee, 24
 Payment of bills, 51
 Payment of mortgages, 175
 Payments by executors, 379
 Pecuniary reputations, 404
 Penalties on delinquent taxes, 264
 Penalty of a bond, 172
 Periods of depression, 223
 Permanence of land, 189
 Permanent investments, 96
 Perpetual leases, 322
 Perpetuity, laws against, 356
 Personal property, loans on, 183
 Persons of unsound mind, 409
 Pet names, 23
 Post-dated checks, 29
 Powers of attorney, 402

Precautions against theft and fraud, 406
 Preferred stock, 128
 Premises in a deed, 193
 Primogeniture, 355
 Principal
 And income, 1; Covenant to pay, 174; Definition of, 12; Distribution of, 10
 Principles of investment, 96
 Private balances in check-books, 50
 Private banks, 15
 Probate of wills, 376
 Problems of the ages, 2
 Promissory notes, 413
 Proper sense of security, 107
 Property
 Alienation of, 355; Concentration of, 355; Contract for, 233; Descent of, 346; Distribution of, 346; Personal, 183; Possession of, 1; Real, 189; Value of, 1

Proportions of mortgages, 165
 Protest, 40
 Public
 Expenditures, 259; Indebtedness, 120; Securities, 120
 Purchase investments, 100
 Purchase-money mortgages, 137
 Purchasing of mortgages, 168
 Purchasing of real estate, *see* Real Property, 222

Q

Qualifications of executors, 367
 Qualifications of guardians, 365
 Qualified indorsements, 36
 Qualities of securities, 101
 Qualities of signatures, 22
 Quit-claim deeds, 194

R

Railroad bonds, 131
 Rates
 Of commissions, 282; Of fire insurance, 274; Of interest, 3
 Real and ample securities, 101
 Real estate, *see* Real Property, 189
 Real-estate bond, 172

Real property, 189

Acquired through foreclosures, 228; Advantages of, 190; Adverse possession, 213; Agents, 280; Alterations, 268; Anxiety to sell, 225; As an investment, 211; Auction sales, 226; Bad investments, 223; Brokers, 283; Builders, 239; Chaffering about, 225; Commissions, 282; Common assurances, 190; Complications by descent, 248; Condemnation of, 213; Contract for property, 233; Deeds, 193; Difficulties in purchasing, 211; Division of, 248; Eminent domain, 213; Estates in land, 191; Examination of buildings, 234; Examination of securities, 103; Exchanging, 223; Expenditures, 257; Free and clear, 253; Further assurance, 195; Future of, 242; Geographical situation, 242; Heavily mortgaged, 253; Importance of, 189; Improved and unimproved, 234; Improvement of, 237; Incomes from, 230; Increase in values, 220; In disreputable neighborhoods, 304; In large cities, 149; Insurance, 270; Investments and speculations, 236; Joint ownership of, 248; Laws concerning, 190; Legitimate speculation, 237; Long possessed, 211; Managing owners, 251; Margin of safety, 219; Ownership of, 196; Partition of, 253; Periods of depression, 223; Purchasing of, 222; Purposes of ownership, 197; Quiet enjoyment, 195; Repairs, 266; Returns from, 230; Rule concerning rents, 233; Rules of investment, 196; Rural, 202; *Seizin*, 194; Sinking funds, 231; Soil, 234; Special assessments, 217; Status of non-residents, 215; Strict investments, 244; Taxation, 257; Tax sales, 227; Title to land, 193; Valuation of, 230; Watching of, 217
Reasons for making wills, 348
Rebates on taxes, 264
Receipts, 179

Recording of mortgages, 171

Reddendum in a deed, 193

References, 307

Regular signatures, 22

Regulation

Of banks, 17; Of safe deposit companies, 92; Of savings banks, 66; Of trust companies, 84

Remainder, estates in, 191

Remarkable investments, 301

Rent, *see* Landlord and Tenant, 286

Accounts, 339; Amounts of, 230; Avarice as to, 299; Collection of, 303; Moderate, 299; Payable in advance, 297; Rule concerning, 233; Securing of, 303

Repairs, 265

Requisites for safety, 101

Responsibility

Of bondsmen, 160; Of sureties, 309; Of tenants, 305

Restrictive indorsements, 36

Reversion, estates in, 192

Revocation of wills, 370

Rights of taxpayers, 263

Risks in fire insurance, 274

Rule

As to rents, 233; For selection of bank, 16; Fundamental, 2

Runs on savings banks, 75

Rural homes, 202

S

Safe cost of homes, 204

Safe deposit companies, 90

Safes, 91

Safety

Margin of, 101; Of investments, 101; Of mortgages, 139

Satisfaction of mortgages, 176

Savings banks, 65

Balancing of pass-books, 72; Deposits, 70; Distinguished from banks, 14; Drawing money, 71; Failures of, 66; General rule, 71; Interest, 72; Investments in, 67; Long-continued accounts, 75; Panics, 75; Pass-books, 70; Regulated by law, 66; Selection of, 68; Value of, 65

Second mortgages, 137
 Securing of rents, 303
 Securities
 Actual and fictitious, 107; Necessary, 109; Personal, 183; Public, 120; Real and ample, 101; Titles to, 105; Valuation of, 102
 Security, proper sense of, 107
Seizin, covenant of, 194
 Semi-rural homes, 202
 Severalty, estates in, 192
 Signatures, 22
 Signing of papers, 399
 Simple homes, 202
 Sinking funds, 231
 Special assessments, 217
 Special covenants in leases, 292
 Special deposits, 21
 Speculation, 96
 Speculation, legitimate, 237
 Stability of values, 166
 State banks, 15
 State bonds, 122
 Statements of banks, 20
 Status
 Of families, 354; Of married women, 381; Of non-residents, 215
 Stock of corporations, 127
 Stocks and bonds, 119
 Strict investments, 244
 Strong box, 90
 Subscribing witnesses, 360
 Suggestions to married women, 389
 Suitability of buildings, 152
 Sure incomes, 108
 Sureties, 309
 Surety companies, 310
 Surnames, 22
 Surpluses in banks, 18
 Surroundings of real estate, 153

T

Tax
 Bills, 264; Rates, 258; Sales, 227; Valuations, 258
 Taxation, 257
 Taxes
 How paid, 264; Penalties and rebates, 264; Remedies against, 263

Taxpayers' associations, 262
 Temporary investments, 96
 Temptation to speculate, 98
 Tenants, *see* Landlord and Tenant, 286
 Terms of leases, 293
 Testament, 347
 Testamentary guardian, 348
 Testamentary letters, 376
 Testamentary trustee, 348
 Testator and testatrix, 347
 Theft, precautions against, 406
 Time deposits, 21
 Title, 193
 Title companies, 142
 Titles, examination of, 142
 Trembling signatures, 23
 Trust companies, 80
 As executors, 81, 368; Drawing money, 87; Interest, 85; Making deposits, 86; Powers of, 80; Regulation of, 84; Selection of, 86
 Trustees, 348
 Trusts, 126

U

Unimproved real estate, 236
 United States bonds, 121
 Unlucky buildings, 299
 Unsound mind, persons of, 409
 Unusual provisions in wills, 360
 Usury, 112

V

Validity of deeds, 193
 Validity of wills, 359
 Valuables, 91
 Valuation of securities, 102
 Valuations for taxation, 258
 Value of money, 1
 Values, comparative, 154
 Values, fluctuations in, 166
 Verification of check-book balance, 51
Vivum vadium, 135

W

Wards, management of estates of, 373
 Wards, training of, 374

- Warranty, 195
 Watching of real estate, 217
 Will and testament, 347
 Wills, 345
 Bequests, 347; Charitable purposes, 357; Codicils, 347; Conditions for success of, 350; Destruction of, 370; Devisee and devisor, 347; Dissolute children, 362; Effect of marriage, 371; Executor and executrix, 347; Guardians, 364; Legacies, 347; Legal age, 359; Litigation, 361; Memoranda for, 350; Mistakes of judgment, 353; Motives for, 352; Perpetuity, 356; Probating of, 376; Reasons for making, 348; Revocation of, 370; Status of families, 354; Subscribing witnesses, 360; Testator and testatrix, 347; Trustees, 348; Unusual provisions, 360; Validity of, 359
 Women, married, 381
 Wrongly written indorsements, 39

Y

- Yearly incomes, 11
 Years, estates for, 192



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